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No. 80-2058

In the Supreme Court of the United States

OCTOBER TERM, 1980

ROBERT W. BOUTZ,
Petitioner,

VERSUS

FEDERAL AVIATION ADMINISTRATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for The District of Columbia Circuit

APPENDIX

RILEY BROCK
3801 Classen Boulevard
Suite 200
Oklahoma City, Oklahoma 73118
Phone: (405) 528-3132

Counsel of Record for Petitioner

April, 1981

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EXHIBIT NO. 1

FAA Form 3330-5

EMPLOYMENT AGREEMENT FOR
ACADEMY INSTRUCTORS

Between the Federal Aviation Administration and
Employees Recruited for Assignment

(Name of FAA Representative)

E. E. CARPENTER
REEMPLOYMENT RIGHTS COORDINATOR

(Name of Employee)

BOUTZ, ROBERT W.

The employee named above and the Federal Aviation Administration agree as follows:

1. The employee's reemployment rights with the FAA shall be governed by the Administration Handbook 3330.6, Reemployment, Restoration, and Return Rights (hereinafter referred to as the Reemployment Handbook), which is hereby incorporated and made a part of the agreement, and the employee's reemployment rights under the provisions of the Reemployment Handbook shall be granted by *SOUTHWEST REGION* (Employee's Parent Organization).

2. The parties shall abide by and complete all employment agreements between them.

3. The employee agrees to remain in an instructor's assignment at the Academy for at least one tour of duty of 24 months. *1st tour expires April 1971*

4. If the employee remains at the Academy for less than the tour of duty specified herein, he is not entitled to reemployment rights.

5. If the employee completes the tour of duty specified herein, and if he wishes to remain at the Academy, he shall execute a new employment agreement.

6. The employee understands and agrees that in the event he leaves the Academy before the completion of two tours of duty, whether voluntary or involuntary, his right to reemployment will be at the grade attained immediately prior to his recruitment for an Academy assignment. If recruited from outside the FAA, his right to reemployment will be at the grade assigned at the time of recruitment. This may result in a change to a lower grade in accordance with agency policy as published in the Reemployment Handbook.

7. All terms used in this agreement shall have the same definition as in the Reemployment Handbook.

8. This agreement is not effective until endorsed by a representative of *Southwest* (Employee's Parent Organization) the employee's parent organization if the employee was recruited from outside the FAA.

(Signature of FAA Representative) (Signature of Employee)

E. E. Carpenter *Robert W. Boutz*

ENDORSEMENT: *Message 172020 dated Mar 69 from Southwest Regian*
(Employee's Parent Organization)

FOR INFORMATION ONLY

The entire handbook entitled, "Reemployment, Restoration, and Return Rights," (3330.6) relating to reemployment rights has been incorporated in the FAA Employment Agreement for Academy Instructors. The parts of the handbook in which employees have indicated the most interest are paraphrased and reproduced below for convenient reference.

1. An Academy instructor must complete one scheduled tour of duty to be eligible for reemployment rights unless an exception is authorized by mutual agreement of the Director, Aeronautical Center and the parent organization.

2. An instructor who serves more than three scheduled tours of duty at the Academy forfeits his eligibility for reemployment rights unless an extension is approved.

3. Instructors are normally expected to serve two tours at the Academy. However the Director, Aeronautical Center may not agree to a second tour for reasons which are deemed to be in the best interests of the FAA. If this occurs, the instructor will be returned to his parent organization, normally at the grade held at the time of selection for the Academy assignment.

4. Eligible employees who serve two or more scheduled tours shall be returned at the grade held at the time of exercising such rights, or at the grade held immediately prior to the Academy assignment, whichever is higher.

---

cc: NC-902/SW-10
4-9-69

EXHIBIT NO. 2

FAA Form 3330-5.1

EMPLOYMENT SUPPLEMENTAL AGREEMENT FOR ACADEMY INSTRUCTORS

(This Agreement Is To Be Executed For Subsequent Tours Of Duty And Attached To The Employment Agreement For Academy Instructors, FAA Form 3330-5)

(Name of Employee)
BOUTZ, Robert W.

Having fulfilled the terms and conditions of the Employment Agreement and any supplemental agreements incor-

porated therein, the employee named above and the Federal Aviation Administration agree as follows:

1. This supplemental agreement is incorporated and made a part of the Employment Agreement for Academy instructors.

2. The employee agrees to serve an additional tour of duty of *24* months* and shall have reemployment rights with the FAA in accordance with the terms and conditions of the Reemployment Handbook.

3. If the employee has completed two tours of duty under this Employment Agreement, the Aeronautical Center and the parent organization must approve the extension of reemployment rights by endorsement in the space provided below.

(Parent Organization)
SW Not applicable. Second tour.

4. If the employee has completed three tours of duty under this Employment Agreement, the Associate Administrator for Personnel and Training and the parent organization must approve the extension of reemployment rights by endorsement in the spaces provided below.

* * * *

5. This agreement is not effective until endorsed by the employee and the FAA Representative.

(Signature of Employee)
Robert W. Boutz

(Signature of the FAA Representative)
Carolyn Hokman for Elwyn E. Carpenter

(Remarks) ....
**Second tour ends April 1973.*

EXHIBIT NO. 3

[NOTE: Page 5 of the Petition erroneously refers to Exhibit 3(a) for a 7 Feb. 1973 letter which is actually found in Exhibit 4]

FAA Form 1522 (2-65)

RECORD OF VISIT

(Name of Person Contacted or in Conference and Location)
Bob Brown, Chief Data Processing Section, AAC-942

(Subject)
Grievance, Robert W. Boutz

(Digest)
I confirmed that Mr. Brown was not in his present position at the time Mr. Boutz reported in to the section. I inquired if his Section was recruiting at this time, would they brief a prospective employee on the 3R program. He said they would but he felt sure such was not the case four years ago. He said that the 3R program at that time was in his opinion an avenue for an instructor to return to the field if after a period of time as an instructor he did not desire to persue it as a career. This, he felt, made recruitment of instructors from the field an easier task since a prospective candidate would not feel that acceptance of an Academy assignment would permanently sever his ties with his region. Since most of the Data Processing Instructors were Engineers he also felt the relationship to the former field position would enhance the grade level that would prevail during the instruction assignment. Mr. Brown volunteered that Mr. Boutz was a good employee and not a trouble maker. He said that he was convinced that Boutz was undertaking a sincere action which was supported by numerous other instructors. I asked if he thought this might be a group action with Mr. Boutz acting as the leader. He said he did not think it was a group action although other

instructors had a vital interest in the outcome of the grievance filed by Mr. Boutz. I asked Mr. Brown if he knew of any student critques at the close of a course that indicated the student thought the instructor was out of touch with conditions in the field. Mr. Brown thought there might have been a few in some other areas but that most students coming to his section were entering a new course of training and would not consider the instructor as out of touch. Mr. Brown concluded our general discussion by saying that instructors felt the 3R program was a right and a benefit and not an avenue to remove an instructor from his Academy position.

(s) *M. L. Sheppard*
15 March 1973 *Grievance Examiner*

EXHIBIT NO. 4

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P. O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
7 FEB 1973

(Subject):
Reemployment, Restoration and Return Rights

(To):
Robert W. Boutz, AAC-942A
Through: AAC-940
AAC-942
AAC-942A

I am unable to accept the declaration of forfeiture of return rights as set forth in your AC Form 3330-40 which was received on 6 February 1973. Under the return rights

handbook, 3330.6, which was in effect when you came to the Academy as an instructor and which you cite, forfeiture after two tours requires concurrence of the Aeronautical Center. See Chapter 3, paragraph 42b(2). Under the current handbook, 3330.6A, which is now controlling, forfeiture at any time in an instructor's tenure is subject to the approval of the Aeronautical Center Director or his designee. See Chapter 3, paragraph 31b(6).

As you know, the agency has determined that it is desirable to rotate technical instructors through the Academy rather than have a permanent instructor staff. This practice is to provide the Academy with a work force which has direct experience in current field practices and at the same time provide a way for the employee to return to his technical career ladder with additional capacity for further growth. Evolving from this is the current practice of limiting Academy instructor assignments to two tours except in unusual circumstances.

By copy of this letter, I will ask the Aeronautical Center Manpower Division to obtain an offer of a position from your parent organization.

If you would like to discuss this with me, please call and arrange a meeting.

(s) *Leon C. Daugherty*
Superintendent, FAA Academy, AAC-900

cc: AAC-14

[APPENDIX]

EXHIBIT NO. 5

[NOTE: Page 6 of the Petition erroneously refers to Exhibit 5 for a 16 April 1973 letter which is actually found in Exhibit 9]

CONVERSATION WITH MR. DAUGHERTY, SUPT. OF FAA ACADEMY, 14th of February, 1973 (attended by Mr. Daugherty, Mr. Boutz and Mr. Quitter):

After reading Mr. Daugherty's letter of 2/7/73, which was a reply to my letter of 1/3/73, I felt there had been very little attention given to what I had said. I indicated I wished to allow my return rights to expire. Mr. Daugherty replied that I could not forfeit them, an entirely different action. I began the conversation with the intent of convincing Mr. Daugherty that, as I had indicated in my letter, the agreement could not properly be enforced as a legal contract which would be binding on me. All of my prepared arguments went out the window when Mr. Daugherty stated he didn't know whether or not the agreement was a contract and furthermore, did not think it was pertinent. He stated that if I did not accept the position offered by the Southwest Region that I would be Administratively reassigned to that position. Mr. Quitter then said something to the effect, I see, the position is obtained under the 3-R program and if a man doesn't accept it, he is reassigned to it. Mr. Daugherty confirmed that statement and he and Mr. Quitter recalled that the authority for reassignment was in an Agency order 3330.9. I then asked why they did not reassign homesteaders and Mr. Daugherty said that he could not because he didn't have a position to which they could be reassigned. I indicated I didn't know much about reassignments and would have to look into the matter, but in any event, I would file a grievance on the 3-R program. Mr. Daugherty said he understood and that his position on the matter was firm, and he would continue with obtaining a job offer for me.

(s) *Robert W. Boutz*

MEMO TO THE FILE 14 February 1973

Through: Keith Lanter, AAC-910A (*KL* 2/16/73)

Mr. Bob Boutz, AAC-940, spent approximately one hour with me this date discussing Academy return rights policy. He stated he did not believe the return rights policy was a binding legal contract and repeatedly asked if I considered it a legal contract. My answer was that I used the term "contract," but did not know if a court of law would define it as a legal contract. I advised him that it is a firm policy of the Academy at this time to approve no two-year extensions beyond the two-tour or four-year period, nor to approve any forfeitures of return rights. I consider the return right policy of the agency to be a part of the overall authority of management to make reassignments for the good of the agency at any time. The return right policy merely provided specific procedures in regards to instructors.

(s) *Leon C. Daugherty*
Superintendent, FAA Academy, AAC-900

Mr. Walter M. Quitter, AC-940 was present and participated in the above discussion.

(Init.) *L D*

EXHIBIT NO. 6

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P.O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
2 MAR 1973

(Subject):
Reemployment, Restoration, and Return Rights

[APPENDIX]

(From):
Superintendent, FAA Academy, AAC-900

(To):
All FAA Academy Instructors and Supervisors

Agency policy regarding instructor rotation is a matter of serious interest to all of us. I want to tell you about the status of a proposal which, if implemented, would modify the rotation system.

Last fall I asked an Airway Facilities Branch study team to review the agency instructor rotation policy and develop recommendations for its improvement. The major recommendation of that study is to establish a means by which instructors with administrative return rights may convert to "career technical instructor" positions after completing four years at the Academy. I have presented the study to several services and offices in Washington and find that they are receptive to the study and to preparation of specific proposals by the Academy.

Under the study's major recommendation, conversion would require concurrence of the employee and management with the latter's approval being based on the need for the employee's services and his past performance as an instructor. It is envisioned that the "career technical instructor" would stay abreast of conditions in the field environment by periodic field assignments, perhaps 90 days every four years, although this length and frequency might not be appropriate for all segments of the Academy.

A second major recommendation provides for moving onboard technical instructors without return rights into the "career technical instructor" category, through similar field assignments.

To expand and adapt the Airway Facilities study team's recommendation so that it would have application in all Academy areas using technical instructors, I have established an inter-branch committee which will consolidate

recommendations from all branches into an Academy position which can be the subject of a formal recommendation to top agency management. Due to the extensive preparation, coordination, and clearances that will be required for approval of a

for approval of a policy change such as this, I anticipate that it will take at least a year and possibly longer before we will know if the proposals can be implemented. Since there is no assurance that such changes will be acceptable, there will be no changes in the current policy being followed on rotation and expressed in Orders 3330.6A and AC 3330.8B.

As significant developments occur, I will keep you informed.

(s) *Leon C. Daugherty*

EXHIBIT NO. 7

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P. O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
5 March 1973

(In Reply Refer to):
AAC-940

(Subject):
AF Branch procedures for handling 3R program extension requests

(To):
All Personnel, AAC-940

Increasing interest in the 3R program is generating questions regarding its present and future administration in the

Academy. This is understandable and each of you in the program should be familiar with its provisions and use this knowledge in planning your future. For this purpose, I suggest that you read the applicable sections of Handbook 3330.6A and AAC Order 3330.8B. These documents provide the objectives and policies which will be followed in all decisions and actions relating to the 3R program.

Some of you may feel that your situation warrants special consideration, and may desire to temporarily defer or modify a rotational action. In this case you should thoroughly document your situation, complete AC Form 3330-40, and request your supervisor to arrange a meeting with me to discuss the matter. After the meeting the Branch will forward its recommendation to the Superintendent. At this time you may request another conference with me and the Superintendent if you desire to personally present your views to the Superintendent.

In all cases, requests for any action within the program should be recorded on AC Form 3330-40 and submitted through channels to AAC-940. The request, with the Branch recommendations, will be forwarded to AAC-900. The Superintendent will make the final decision.

An Academy team action group is now engaged in drafting a change to the 3R program, but existing policies will remain in effect until the changes have final approval, which will probably take some time.

I fully appreciate the fact that you must have knowledge of the 3R program in planning your personal and professional future, and will keep you advised of any developments or changes in the program.

(s) *W. M. Quitter*
Chief, Airway Facilities Branch, AAC-940

EXHIBIT NO. 8

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P.O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
April 9, 1973

(Subject):
Job Offer under 3R Program

(To):
AAC-900

The job offer, Engineering Technician, GS-802-12, that has been made to me under the 3R Program would be a giant step backwards in my career. I was working at a higher level of technical responsibility seven years ago. At that time, I had full engineering responsibility with the Department of Defense. U. S. Air Force, for developing the engineering installation packages for NAVAIDS. The installation was performed by technicians who followed the criteria and step by step installation instructions contained in the package. The job I have been offered is the FAA's counterpart of the DOD technicians who performed the installation work, described in the engineering installation package, I had the responsibility for developing.

If I should accept, or am forced into this position, it would do irreparable harm to my career.

Since there will be employees who will be removed from engineering positions because they are unable to perform the required engineering work, how can I prove I was not among them?

I could never adequately explain to future prospective employers why, in the absence of a general reduction in force,

I was removed frcm an engineering position of professional status and placed in a technician's job at a level of technical responsibility below that which I held seven years ago. This might be impossible to explain to private industry. If there were other qualified applicants seeking employment in the same job as I, the seed of doubt about the reasons surrounding the transfer could easily be sufficient to eliminate me from competition.

I am enrolled with the State of Oklahoma State Board of Registration for Professional Engineers as an Engineer in Training (EIT 1493). Reduction in the level of my technical responsibility to that of an engineering technician would reduce the amount of engineering time that I could claim towards their requirements for registration as a Professional Engineer. In addition, to meet the requirements for registration, as a Professional Engineer, I must show "Progressive experience in engineering work of a character and grade which indicates to the Board that the applicant may be competent to practice engineering . . ." Note the word "Progressive".

This job offer fails to comply with the provisions of 3330.6A Chapter 1, paragraph 1a and 5a. Under the circumstances it is also contrary to FPM chapter 250 paragraph 1-2a (5), (6), (7), (8), (10), (11), paragraph 2-1a (2) and paragraph 2-2b (1) and (2).

I would be deeply ashamed and harmed to have in my employment history a transfer to a GS-802-12 position at this time in my career, due to the reduction in level of technical responsibility and status.

I am by way of this letter requesting that I not be forced into a position where I must choose between career regression and my employment with the FAA.

(s) *Robert W. Boutz*
AAC-942A

EXHIBIT NO. 9

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P. O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
April 16, 1973

(In Reply Refer to):
(Subject):
Job offer under 3R Program

(To):
Superintendent, FAA Academy, AAC-900

I am unwilling to accept a career setback in the absence of a reduction in force. It would not be in my best interest to do so and I can find no justification for acting contrary to my best interest.

I hope that I will not be penalized for refusing to accept the job offered, GS-802-12, under the 3R Program, but hereby do so. I sincerely believe acceptance would be harmful to my career, and I insist on being allowed to choose those jobs that I feel are to my advantage and not those that the Academy tells me are to my advantage. Historically, Government programs, policies and philosophy about what is "best" for the employee in terms of career progression have a way of changing. I suspect that the current "need to maintain an instructor force current in field practices" will give way to a more urgent need as the needs of management or managers change. In the overall picture then, it makes one wonder about the importance of such programs. I personally don't feel the present program important enough for me to accept a career setback just for the sake of the program. Particularly when the programs policy is to "provide reasonable protection against employ-

ment uncertainties and career setbacks for employees . . .". To be candid about the matter, I believe that the present management need to rotate all technical instructors at the Academy has nothing to do with "keeping an instructor force current in field practices". I think that is the best reason that could be found to justify rotating Academy instructors, but the real management need for the program has not been announced.

I hope that it will be understood that I will take every action available to me to have my employment and career left in my care and not to allow something as important to me as my livelihood to be left to an arbitrary selection of a job that is being forced upon me for no other reason than it happens to be vacant at the time I completed four years at the Academy. It is an absolute certainty that a program that completely disregards the needs of the employee cannot and should not last. The mandatory rotation of instructors would be doomed even if it were not in violation of the regulations. Being in such flagrant violation of regulations in addition to disregarding the needs of employees assures me that its demise will be quick in coming. I don't wish to be the last employee harmed by this program before it is abandoned.

(s) *Robert W. Boutz*
Electronics Engineer, (Instruction)

EXHIBIT NO. 10

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AERONAUTICAL CENTER
P.O. Box 25082
Oklahoma City, Oklahoma 73125

(Date):
May 18, 1973

(In Reply Refer to):
R. W. Boutz

(Subject):
Reassignment

(To):
Superintendent, FAA Academy, AAC-900

As a result of your directing my reassignment to a GS-802-12 in the Southwest Region, and your proposed termination if I refuse the reassignment, I request clarification of the following points. Please give a specific answer to each question.

1. Does the FAA Academy consider the Employment Agreement and the subsequent extension to be a contract, which is binding upon me?
2. At this time do the terms of 3330.6 apply to me?
3. At this time do the terms of 3330.6A apply to me?
4. Is the position I now hold, GS-855-12, a permanent position?
5. Are Academy instructor positions part of the Competitive Service?
6. Has there been competition among like positions at the Academy to see who best fits the needs of the reassignment?

7. Are positions at the FAA Academy filled solely on the basis of merit and fitness?
8. Are there any requirements for filling Academy positions other than merit and fitness?
9. Am I qualified for the position I am now holding?
10. At this time are there GS-855-12 positions vacant at the FAA Academy?
11. If I refuse the reassignment do the provisions of title 5 USC, Part 330, subject c—Displaced Employee Program, apply to me?
12. Does my job description or job qualifications require recent field experience?
13. Under exactly what regulation, statute, executive order, or other authority has my reassignment been directed and how many Academy Instructors have been reassigned under this authority in the past twelve months?
14. Under exactly what regulations, statute, executive order or other authority will I be terminated if I refuse the reassignment, and how many Academy Instructors have been terminated under this authority in the past twelve months

I request that I be given 10 days from the receipt of your reply to this letter to make my decision regarding the reassignment.

(s) *Robert W. Boutz*

EXHIBIT NO. 11

FAA Form 1522 (2-65)

RECORD OF CONFERENCE

(Date):
5/21/73

(Name of Person Contacted or in Conference and Location)
Mr. Leon C. Daugherty, Mr. Walter Quitter, Mr. Robert W. Boutz, Mr. Riley Brock (attorney for Mr. Boutz) and the undersigned.

(Subject)
Meeting with Mr. Robert W. Boutz ref. decision to accept/decline reassignment to SW Region.

(Digest)
The purpose of the meeting was to request Mr. Boutz's decision in regards to the attached May 4, 1973 letter and to provide an official response to Mr. Boutz's letter of May 18, 1973.

Mr. Daugherty opened the meeting by advising that he had received Mr. Boutz's letter of May 18, 1973 and stated: "This meeting is to give you an official reply. Mr. Marks will make a record of this meeting and provide you a copy." Mr. Brock asked if this was to be a verbatim transcript. He was advised by the undersigned that it was not a verbatim transcript but merely recorded the intent and purpose of the meeting. Mr. Daugherty then continued, "My official position is that the questions you raised were considered during the proceedings in your grievance. I refer you to the personnel office for any further information you require. With respect to my letter of May 4, 1973, I must have your decision today as stated in the letter."

Discussions then ensued as to the entitlement to answers to the questions posed prior to Mr. Boutz giving his decision. Mr. Brock and Mr. Boutz raised these questions.

Mr. Daugherty reiterated his position and requested a decision from Mr. Boutz. Mr. Brock stated that he and Mr. Boutz would like to discuss the matter with the personnel office and that a decision would be given to Mr. Daugherty by close of business 5/21/73. Mr. Daugherty concurred with the request by Mr. Brock.

The meeting adjourned at approximately 1:15 PM, 5/21/73.

cc: Mr. Robert W. Boutz, Mr. Riley Brock, AAC-7, AAC-940, AAC-900, AAC-911, AAC-16, AAC-14

(Date)
5/21/73

(Title)
Chief Administrative Mgmt. Staff

(Signature)
FREDERICK R. MARKS

EXHIBIT NO. 12

[Letterhead, Law Office of Riley Brock]

May 21, 1973

Mr. Leon C. Daugherty
Superintendent, FAA Academy
AAC-900
FAA Aeronautical Center
Oklahoma City, Oklahoma

Re: Reply for Mr. Robert W. Boutz to your letter of May 4, 1973

Dear Mr. Daugherty:

This letter is a reply on behalf of Mr. Robert W. Boutz to your demand that he accept or decline the reassignment to the FAA Southwestern Region.

On May 18, 1973, Mr. Boutz requested answers to certain questions concerning the authority for your demand that he accept this proposed transfer. Earlier today during personal interview in your office, you stated that these questions had been answered during Mr. Boutz's recent grievance. I do not agree with your conclusion and renew Mr. Boutz's request for answers to them.

You have set today as the deadline for Mr. Boutz to either accept or decline the directed reassignment, but, if you will thoughtfully reconsider Mr. Boutz's questions you will surely see that they bear upon matters which Mr. Boutz should have benefit of in arriving at any final decision.

This proposed reassignment is one not requested by Mr. Boutz, and to the present time Mr. Boutz has not been informed as to the specific authority by which he can be forced to accept such reassignment. Additionally, no clear cut alternative action has been proposed in the event that Mr. Boutz does not accept the proposed reassignment.

In the present posture of the situation, the FAA Academy Administration has directed a reassignment which Mr. Boutz did not request; therefore, since he has been a passive element thus far, he intends to remain a passive element until, at least, such time as he is fully informed as to the specific authority for his forced reassignment and the alternatives he faces upon its refusal. Under these circumstances, neither Mr. Boutz nor I are able to make an informed decision with regard to his acceptance or rejection of the directed reassignment.

I am attaching to this letter a copy of a summary of a conversation which transpired between Mr. Boutz and I on the one hand, and you, Mr. Walter Quitter and Mr. Frederick R. Marks on the other hand. This conversation was held in your office on May 21, 1973, commencing at approximately 1:00 p.m. and lasted about 15 minutes. As you recall, during this conversation, Mr. Boutz and I insisted that we were entitled to answers to 14 questions pro-

pounded to you in Mr. Boutz's letter dated May 18, 1973. You insisted at the time that they were answered during Mr. Boutz's recent grievance. The summary by Mr. Marks states that these questions were considered during the grievance. There is a distinct difference between questions being considered and answered. While the answers to certain of the questions are certainly obvious, the answers to questions No. 1, 2, 3, 6, 10, 11, 13 and 14, are either germane to the Agency's authority to displace him or his rights upon displacement. Your insistence that Mr. Boutz make a decision effecting his livelihood and future professional status while you maintain a shroud of secrecy around your authority to displace him, (questions 1, 2, 3, 4, 6, 10, 13 and 14) as well as around his rights upon displacement (questions 4, 6 and 11) is tantamount to asking him to play a game of blind man's bluff.

Yours very truly,
(s) *Riley Brock*

RB:nh
Enclosures: As stated above.

EXHIBIT NO. 13

[Letter from Leon C. Daugherty, FAA Academy]

MAY 25 1973

Mr. Robert W. Boutz
Airway Facilities Branch
FAA Academy
FAA Aeronautical Center
Oklahoma City, Oklahoma

Dear Mr. Boutz:

This is notice that I propose to remove you from your position of Electronic Engineer (Instructor), GS-855-12,

$19,462 per annum, at the Airway Facilities Branch, FAA Academy, FAA Aeronautical Center, Oklahoma City, Oklahoma, not earlier than 30 days from the date you receive this notice. The reason for this proposed action is your refusal to accept a position change within the FAA which would carry out the terms of the established administrative return rights policy for Academy instructors.

The facts are that about the time of your initial employment with the FAA on April 6, 1969, you signed FAA Form 3330.5, Employment Agreement for Academy Instructors. This agreement provided that an instructor's employment was subject to the provisions of directive 3330.6, Re-employment, Restoration and Return Rights. The agreement stipulated that re-employment, rights were to the FAA's Southwest Region, that the parties shall abide by and complete all employment agreements between them, that an Academy instructor must complete one scheduled tour of duty (of two years duration) to be eligible for re-employment rights, and if the employee completed the tour of duty specified and wished to remain at the Academy for an additional tour, he shall execute a new employment agreement.

Because your first two-year tour of duty was to expire during April 1971, a new agreement was entered into. The second document you signed, indicating your agreement thereto, was FAA Form 3330.5.1, Employment Supplemental Agreement for Academy Instructors. This agreement stipulated that the employee agrees to serve an additional tour of duty of 24 months and shall have re-employment rights with the FAA in accordance with the terms and conditions of the Re-employment Handbook.

Directive 3330.6 entitled "Re-employment, Restoration, and Return Rights", was in effect at the time of your employment with the FAA in April 1969. This regulation was revised and republished under the date of July 27, 1971, and designated as 3330.6A. Neither regulation 3330.6 nor

3330.6A provides you the right of independent forfeiture of return rights at the end of two 2-year tours of duty at the Aeronautical Center and we are unwilling to accept such forfeiture.

From all the foregoing facts, it is clear that after the second 2-year tour of duty, Academy instructors are to be assigned from the FAA Academy to the region which has been determined to be their parent organization. Your second tour of duty ended on April 5, 1973. In order to fulfill the terms of the employment agreement, you were to be offered a position in the FAA's Southwest Region at the grade held at the time of exercising return rights or at the grade held immediately prior to the Academy assignment, whichever is higher.

By telegram dated March 14, 1973, a responsible representative of the Southwest Region offered you a position of Engineering Technician, GS-802-12, in the Electronics Engineering Branch, Fort Worth, Texas, a position which satisfies the terms of the return rights agreement. This offer was communicated to you about March 16, 1973. After receipt of the offer you had 30 days in which to decide whether to accept it. In response to such offer, you voiced your objections to the assignment in letters dated April 9 and 16, 1973, addressed to Superintendent, FAA Academy. In these two presentations, you objected to the job offered by the Southwest Region on grounds that it was not career progression and in your April 16 letter, you refused the job offer.

By letter dated May 4, 1973, and delivered to you on May 7, 1973, the Superintendent, FAA Academy, advised that alternatives to your relocation had been explored and that the only present recourse for you in order to retain your employment with the FAA was for you to fill the Southwest Region's job position. In that same letter the Superintendent set a deadline of May 21, 1973 for you to advise him in writing of your decision to comply with or refuse

the assignment to the Southwest Region. In a subsequent conversation, this time limit for replying was extended to May 22, 1973. To date, we do not have your answer but only a demand that certain questions you have be answered. You have had ample time to explore and resolve any questions you may have had which you felt would be helpful in arriving at a decision. Your lack of a positive answer by the time limit set is construed as a declination to accept the relocation.

Therefore, since: (1) no adjustment which is to your satisfaction can be made; (2) you have completed the normally expected two tours of 2-years each; (3) we are not willing to accept forfeiture of return rights; (4) the position change and relocation to the Southwest Region would carry out the terms of the return rights agreement; (5) you have refused the position offered by the Southwest Region by your letter of April 16; (6) your reasons for declining the offer and your reasons for failing to give a positive answer as set out in representative Riley Brock's letter of May 21, 1973 are not acceptable to me; and (7) you were given a clear chance to change your mind and to accept the position offer by the Southwest Region which you did not do by the date specified, I propose to separate you from the FAA, which action we consider to be in the best interests of the service.

In proposing this action, you are assured that your performance has been satisfactory and this action is no reflection on your competence in any way.

The material relied on to support this proposed action is being handed to you for your use and review. If you are otherwise in a duty status, you will be given 16 hours of duty time to review the material mentioned above and to prepare your reply. If you believe this amount of time unreasonable, consideration will be given to granting additional time if you submit a written request stating why more time is needed and the reasons it is required.

You may answer the reasons for this proposed action personally, in writing, or both to me. You may also submit affidavits in support of your answer. You will be allowed 15 calendar days from the date you receive this letter to submit your answer. Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time and indicate the number of calendar days you desire. Full consideration will be given to any answer you submit. If you do not understand the above reason(s) why your removal is proposed, contact me for further information.

As soon as possible, after your answer is received, or after expiration of the 15-day limit if you do not answer, a written decision will be issued to you.

You will remain in an active duty status at your present grade and salary during this advance notice period.

ORIGINAL SIGNED BY
LEON C. DAUGHERTY

LEON C. DAUGHERTY
Superintendent, FAA Academy, AAC-900

cc: Mr. Riley Brock

Receipt acknowledged: (s) *Robert W. Boutz*
Date: *5/25/73.*

EXHIBIT NO. 14

[Letter from Superintendent, FAA Academy]

MAY 25 1973

Reassignment

Superintendent, FAA Academy, AAC-900

Mr. Robert W. Boutz, AAC-942A

Attached are answers to the questions contained in your letter to me dated May 18, 1973.

LEON C. DAUGHERTY

Enclosure
cc: Mr. Riley Brock

1. The FAA Academy and the Aeronautical Center consider the Employment Agreement and subsequent extensions to be recognizable obligations.

2. & 3. Directive 3330.6 was in effect at the time of your employment in the FAA Academy and as you know, this directive was revised and published as 3330.6A under the date of July 27, 1971. Neither directive grants the right of forfeiture of return rights after the completion of two 2-year tours of duty without the specific approval of the Aeronautical Center. Therefore, with respect to provisions applicable to your situation, they both apply.

4. Yes

5. Yes

6. No. Competition is not appropriate since your offered relocation is the product of the application of the 3-R Program.

7. It is not entirely clear as to what factors the terms "merit and fitness" are intended to encompass. However, positions at the Academy are filled either by following the provisions of the Merit Promotion Plan or under standard placement procedures in cases where a position is not filled by promotion. Civil Service Commission and agency regulations applying to the competitive service are utilized.

8. We believe this question is answered by item 7 above as we are not certain as to your meaning of the words "merit and fitness".

9. Yes

10. Yes

11. Yes. If you do not accept the assignment to the Southwest Region, you will be given placement assistance. But, we can give no assurance of a suitable position.

12. While your job description does not specifically require recent field experience, this is a factor important to the training of field personnel.

13. Your assignment to the Southwest Region has been directed under authority of the 3-R Program. Program features were contained in 3330.6 and are now set forth in 3330.6A. There have been many instructors relocated under this authority.

14. An applicable authority is that found in Federal Personnel Manual, Supplement 752-1. The following statement is found in Sub Chapter S1 — Action Coverage, S1-3 — Removals, a. Removals covered by Part 752, (4) Failure to Accept New Assignment:

> "When an agency has found it necessary to assign an employee to a position in a different geographical or organizational location and the employee refuses to accept the new assignment, he may be removed for failure to accept the assignment. Removal for failure to accept a new assignment is appropriate when the employee refuses a position change that would carry out the terms of an established rotation policy or refuses any other position change which the agency has determined would serve the best interests of the service. (See Burton vs. U.S. and Handler vs. Secretary of Labor)."

No instructor has been separated in the last twelve months. There have been no other relocation refusals.

EXHIBIT NO. 15

June 9, 1973

Mr. Robert W. Boutz
AAC - 942A
FAA Aeronautical Center
Oklahoma City, Oklahoma

Mr. Leon C. Daugherty
Superintendent, FAA Academy
AAC - 900
FAA Aeronautical Center
Oklahoma City, Oklahoma

Dear Mr. Daugherty,

This letter is in response to your proposal of May 25, 1973, to remove me from my position of Electronic Engineer (Instructor), GS - 855 - 12, $19,462 per annum, at the Airway Facilities Branch, FAA Academy, FAA Aeronautical Center, Oklahoma City, Oklahoma. Your stated reason for this action was given by you as my "refusal to accept a position change within the FAA which would carry out the term of the established administrative return rights policy for Academy instructors".

I wish to point out certain discrepancies of fact which exist in your May 25th. letter which proposes my dismissal.

1. My initial employment with the FAA was 1961 rather than 1969.
2. The election which I have chosen is to allow my return rights to expire in accordance with Handbook 3330.6, Chapter 3, paragraph 41C; at no time have I contended that I was *forfeiting* my return rights.
3. During the conference with you on May 21, 1973, Mr. Brock and I agreed to either accept or decline the proposed reassignment if you would state in writing that your official position was that my question submitted

to you were *answered* during the grievance procedure. Your official reply given through Mr. Frederick Marks' letter of May 21, 1973, however, was that the questions I asked were considered during the grievance procedure. No attempt was ever made by you or your office to answer these questions until I received answers concurrently with the proposal for dismissal, all dated May 25, 1973.

4. You state in your letter that the GS - 802 - 12 Engineering Technician position offered to me satisfies the terms of the return rights agreement. Chapter 1, Paragraph 6 (e) of 3330.6 states:

> "If the employee has professional status in his former position, e.g., Engineer, Architect, etc., he must be restored to a position of equal professional status."

My statuus prior to acquiring return rights was that of GS-855-11 Engineer and I must be returned to an equal professional status rather than that of Engineering Technician.

I wish also to respond to the answers which you furnished me as an attachment to your letter of proposed dismissal:

Question 1:

> Does the FAA Academy consider the Employment Agreement and the subsequent extension to be a contract, which is binding upon me?

Answer:

> The FAA Academy and the Aeronautical Center consider the Employment Agreement an dsubsequent extensions to be recognizable obligations.

Comment:

> Question 1 is pertinent to my cause and deserves an unequivocal answer. Your answer begs that question

and contributes nothing to my understanding of my circumstances. This document is either a contract or it is not a contract. If the Agency continues to use it to establish either rights or duties between employer and employee, then it should be given some definite legal characterization.

Question 2:

At this time do the terms of 3330.6 apply to me?

Question 3:

At this time do the terms of 3330.6A apply to me?

Answers:

Directive 3330.6 was in effect at the time of your employment in the FAA Academy and as you know, this directive was revised and published as 3330.6A under the date of July 27, 1971. Neither directive grants the right of forfeiture of return rights after the completion of two 2-year tours of duty without the specific approval of the Aeronautical Center. Therefore, with respect to provisions applicable to your situation, they both apply.

Comment:

You have replied that both directives apply to me. I call your attention to the date of issue of 3330.6A as being July 27, 1971. I signed the extension agreement three months prior to the existence of 3330.6A, i.e., April, 1971. I, therefore, disagree that I can be bound by terms and conditions which did not exist at the time of entering into an agreement. Your position, however, is consistent with the pressure put upon me to sign the extension agreement in 1971. At that time I was informed that the only way I could remain at the Academy was to execute a new agreement as required by Order AC - 3330.8A. At the same time I was informed that the 3R Handbook (3330.6) could be changed at any time and I would be bound by the terms of the changes.

Questions 4 & 5:

4. Is the position I now hold, GS-855-12, a permanent position?
5. Are Academy instructor positions part of the Competitive Service?

Answers:

4. Yes.
5. Yes.

Comment:

The 3-R Rotation Program is being used by the Aeronautical Center management as a subterfuge to circumvent the competitive bidding requirements of a Reduction In Force. This is being done by management either refilling or not refilling a position as it is vacated by forced rotation. It is believed, and therefore alleged, that Aeronautical Center personnel statistics will show that during the recently imposed Presidential Freeze period both the number and average grade level of Academy personnel were *very substantially* reduced. This was accomplished by a discriminatory use of the 3-R forced rotation of Instructors, rather than by Reduction In Force Rules as required by the competitive service.

Question 12:

Does my job description or job qualification require recent field experience?

Answer:

While your job description does not specifically require recent field experience, this is a factor important to the training of field personnel.

Comment:

Reference is made to ORDER AC-3330.3D, (13 July 1972) paragraph 10.C (1), at page 6 as follows:

Special Job Requirements. Special requirements which are considered highly desirable and job re-

lated may be recommended in writing by operating managers. These requirements may stem from legal, administrative or unusual conditions related to the job. They may be special licenses, an absolute training requirement, mobility, etc. *The special job requirement must be documented in the position description.* (Emphasis added)

Question 13:

Under exactly what regulation statute, executive order or other authority has my reassignment been directed?

Answer:

Your assignment to the Southwest Region has been directed under authority of the 3-R Program. Program features were contained in 3330.6 and are now set forth in 3330.6A. There have been many instructors relocated under this authority.

Comment:

Order 3330.6A was not in existence at the time I last signed an employee supplemental agreement. Your answer that authority for reassignment arises from the 3-R Program is not specific. This is also inconsistent with your statement to me in our conversation of February 14, 1973, that if I refused a reassignment under the 3-R Program that you could reassign me administratively under 3330.9, Chapter 3, paragraph 301, entitled "Administrative Reassignment and Relocation."

In addition to the above comments on specific questions I make the further general comments:

1. My directed reassignment to the Southwestern Region as an Electronic Technician is inconsistent with present Agency efforts to upgrade field Technicians to positions of Engineer.
2. I agreed to participate in a program designed for career protection—not one to promote field currency—

this change came about with ORDER 3330.8B, which is not part of the agreement.

3. Only half (approximately) of the Academy Instructors have 3-R "Rights". This makes the program inherently discriminatory.

4. Some recent Aeronautical Center employees have been given four year tours of duty with return rights to some point in the Continental U. S. to be determined at a later date. This is further inconsistency and discrimination against the rights of employees.

5. The 3-R Program is, in effect, an unauthorized, mandatory rotation policy, and therefore invalid. In a letter from Mr. A. L. Coulter to Senator Dewey F. Bartlett it was stated: "It is agency practice to rotate all technical instructors after completion of two tours, four years, at the Academy."

6. There is no way that I can protect my career without jepordizing my job, since acceptance of the directed reassignment, even under protest and appeal, would show a career regression from Engineer to Technician.

7. I have neither requested nor refused a reassignment. I did, however, ask a number of questions of you which weighed heavily upon the merits of the directed reassignment. When I did finally receive some semblance of answers to those questions they were accompanied by your proposal to terminate my employment.

8. The statement that recent field experience is a factor important to the training of field personnel emanates from abstract theory and is not supported by any known survey, study or compilation based upon comparison, sampling or other reliable criteria.

One of the stated policies of 3330.6A is:

"To provide reasonable protection against employee uncertainties and career setbacks for employees will-

ing to accept special assignments outside their normal career patterns."

This policy is consistent with that of the predecessor order 3330.6. This stated policy, however, bears no relation either directly or indirectly to a policy of insuring that Instructors have field currency. It has only an indirect bearing upon a policy of enforced career progression. Therefore, a sudden change in management policy whereby return rights, which originally were protection for the employee, become the means for management to impose its desires upon the employee, is a deceptive and misleading employment practice which is not countenanced by the rules of Federal civil employment. In fact such a practice directly violates Chapter 250 of the Federal Personnel Manual, paragraph 1-4a (1):

> "(1) Establish and define clearly the major objectives and policies governing personnel management within his agency".

The Aeronautical Center Management, both now and in the past, has been totally derilect in "clearly defining" the objectives and policies of the "Return Rights Program". The original order promulgating this program *seems* to be OAP 3330.6, dated September 15, 1964. A major revision took place on November 3, 1967, with several minor revisions over the following months. On July 27, 1971, it was rewritten and reissued as 3330.6A.

As conceived in 1967, the Return Rights Program was an employee incentive to accept employment at the Aeronautical Center, since it was in truth a benefit and right of the employee. The revisions which it has undergone however, have coverted the program into one under which a major portion of the Academy Instructors can be arbitrarily and capriciously reassigned according to the dictates of management. Recent announcements with regard to the so-called "homesteaders" indicates the intent to extend some form of the program to include an even greater portion of the Instructors.

In summary, my present situation arises from management having converted an employee right into a purported employee obligation. This purported obligation is being imposed upon me at the peril of my career and in violation of my rights to have every detail of the proceduure explained to me along with a clear and complete explanation of the exact authority under which I would be dismissed.

Yours very truuly,
(s) *Robert W. Boutz*
AAC-942A

Prepared by:
Riley Brock, Attorney at Law
3730 N.W. 23rd St.
Oklahoma City, Oklahoma 73107

EXHIBIT NO. 16

Mr. Robert W. Boutz
Airway Facilities Branch
FAA Academy
FAA Aeronautical Center
Oklahoma City, Oklahoma

JUN 28 1973

Dear Mr. Boutz:

My letter of May 25, 1973, informed you of a proposal to remove you from your position because of your refusal to accept a position change within the FAA which would carry out the terms of the established administrative return rights policy for Academy instructors.

I have carefully reviewed your written presentation of June 9, 1973, submitted in response to my letter. In this review, I have given particular attention to the elements critical to your refusal to accept relocation to the Southwest Region.

You state that you have not refused a reassignment. This, I cannot accept. In your letter to me of April 16, 1973, you stated, "I hope I will not be penalized for refusing to accept the job offered, GS-802-12, under the 3-R Program, but hereby do so". This is a forthright refusal. By letter dated May 4, 1973, I responded advising you that you were directed to accept the reassignment to the Southwest Region and that failure to comply with my relocation directive might result in your being separated from the FAA. A deadline of May 21, 1973, was set for you to provide your written decision to either comply with or refuse the assignment to the Southwest Region. Your lack of a positive response on this matter by the date set can only be construed as refusing to accept the relocation.

Also, you contend that you are entitled by regulation to an offer of a professional rather than a technician type position. The mandatory provision of the paragraph you refer to in directive 3330.6 pertains specifically to statutory return rights rather than to the administrative return rights which are granted to Academy instructors. However, you are entitled to grade consideration and the position offered by the Southwest Region satisfies the attained grade entitlement. Therefore, I find that the position offer (Engineering Technician, GS-802-12) by the FAA's Southwest Region was in compliance with paragraph 43b of 3330.6, and that my decision to return you to you parent organization is consonant with the provisions of paragraph 42b of 3330.6, the discretionary alternatives to that action not being granted.

Therefore, I find you have improperly refused to accept the proposed position change and that such change would serve the best interests of the service. This being the case and for the reasons stated in my letter of May 25, 1973, it is my decision to remove you from the service effective July 6, 1973.

You have the right to appeal this action to the FAA or to the Regional Director, Dallas Region, U. S. Civil Service

Commission, 1114 Commerce Street, Dallas, Texas 75202, or first to the FAA and then to the Civil Service Commission in accordance with the following:

a. If you appeal first to the Civil Service Commission, you will have no right to appeal to the FAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal with such offer of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.

b. If you appeal first to the FAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the FAA is made. However, if no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the FAA by appealing to the Commission.

If you are otherwise in a duty status, you and your representative if an employee and otherwise in a duty status, will be given the duty time actually neded up to 16 hours to prepare your appeal to this action. If you believe this amount of time unreasonable, consideration will be given to granting additional time if you submit a written request stating why more time is needed and the reasons it is required.

An appeal to the FAA should be submitted through me to Mr. A. L. Coulter, AAC-1, Appeals Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 calendar days after the effective date of your removal. Upon your request, Mr. Forrest Haley, AAC-16, will give you all further information you may desire about appeals procedures to the FAA or to the Civil Service Commission.

Original Signed by Jay H. Moody

LEON C. DAUGHERTY
Superintendent, FAA Academy

Receipt acknowleged: (s) *Robert W. Boutz*
Date: 6-23-73

EXHIBIT NO. 17

STANDARD FORM 50 — Rev. December 1961
U.S. Civil Service Commission

NOTIFICATION OF PERSONNEL ACTION

(For Agency Use) bh

1. Name (Mr.)	2. (For Agency Use)	3. Birth Date
BOUTZ, ROBERT W.	AAC-942-73-36	12-24-33

4. Social Security No.	5. Veteran Preference	6. Tenure Group
233-50-6135	2 (5-point)	1

7. Service Comp. Date	9. FEGLI	10. Retirement
03-01-59	3 (Waived)	1 (CS)

12. Code	Nature of Action	13. Effective Date
325	Separation—Decl. Assign. (Ft. Worth, Texas)	07-06-73

15. From: Position Title and Number
Electronics Engineer (Instruction) AC-10653

16. Pay Plan and Occupation Code	17. (a) Grade	(b) Step	18. Salary
(93-Q) GS-855	12	06	pa $19,462

19. Name and Location of Employing Office
DOT, FAA Aeron'l Center — FAA Academy
Oklahoma City, Oklahoma — Airway Facilities Branch

25. Duty Station (City-county-State) — 26. Location Code
Oklahoma City—Oklahoma—Oklahoma — 40-3550-109

27. Appropriation — 28. Position Occupied
4010/8A0 8052/1111 — 1 (Comp. Serv.)

• • • •

30. Remarks:

Separations: Show Reasons Below As Required. Check if Applicable:
Nonsensitive position.
Offered job of Engineering Technician, GS-802-12, $19,462 pa, Ft. Worth, Texas.
No other work available.

33. Code Employing Department or Agency — 35. Date
TD 03 Department of Transportation — 07-09-73

34. Signature (Or other authentication) and Title

EXHIBIT 18

[NOTE: Page 11 of the Petition erroneously refers to Exhibit 18 for a Judgment by the United States Court of Appeals for the District of Columbia Circuit which is actually found in Exhibit 27]

[Excerpt From Grievance Examiner's Report to the Aeronautical Center Director]

8. FINDINGS.

a. I find that Handbook 3330.6 dated 3 November 1967 was the directive concerning 3R rights when the Grievant's employment began with the FAA. I also found that Handbook 3330.6, and revisions thereto, were cancelled concurrent with the issuance of Order 3330.6A, dated 27 July 1971. I also found that revision of an agency order by re-issuance is procedurally correct. (See Order 1320.1A, paragraph 5 (a) and FOREWORD

to Order 3330.6A, page (i), paragraph 3 (a).)

b. I find that the provisions contained in FAA directives are directive in nature and are to be complied with by organizations or persons whom they affect. (Order 1320.1A, paragraph (1), Policy.)

c. I find that there is both statutory and regulatory authority for administrative regulations such as FAA Orders issued by heads of agencies and personnel managers. (See Exhibit X.)

d. I find that the designated parent region concurred with the Aeronautical Center in granting the Grievant reemployment rights as prescribed in FAA directives at the time of his transfer to the FAA. (Exhibit L.)

e. I find that the grievant, at some time near the date of his employment with the FAA, (6 April 1969) executed an FAA Form 3350-5 (8-67), Employment Agreement for Academy Instructors.

f. I find that on 22 January 1971 the Grievant requested an additional two year term at the Academy by execution of a form letter furnished to him. (See Exhibit 2.)

g. I find that the Grievant executed an Employment Supplemental Agreement for Academy Instructors, (FAA Form 3330-5.1) subsequent to his 22 January 1971 request. The original is on file in the Grievant's Official Personnel Folder.

h. I find that the Grievant's contention that he can elect forfeiture of his reemployment rights at this time, if he so elects, is not in conformance with the applicable Order, 3330.6A.

i. I find that the provisions of former Handbook 3330.6 and current Order 3330.6A are not in violation of statute, Executive Order, or Civil Service Regulation. (See Exhibit X.)

EXHIBIT NO. 19

UNITED STATES CIVIL SERVICE COMMISSION
DALLAS REGION, DALLAS, TEXAS

APPEAL OF MR. ROBERT W. BOUTZ, UNDER SUBPART B OF PART 752 OF THE CIVIL SERVICE COMMISSION REGULATIONS

PART I. INTRODUCTION

Mr. Robert W. Boutz, 5530 Woodbrier, Oklahoma City, Oklahoma 73122, appealed to the Civil Service Commission from a personnel action accomplished by the Department of Transportation, Federal Aviation Administration, Oklahoma City, Oklahoma, removing him on July 6, 1973, from the position of Electronics Engineer (Instruction), GS-855-12, salary $19, 462 per annum.

Mr. Boutz presented satisfactory evidence of his entitlement to appeal to the Civil Service Commission. He has a competitive status and has completed a probationary period. The adverse action appealed, a removal accomplished by an administrative officer so acting, falls within the purview of the regulations. The appeal was filed within the Commission's established time limit.

The appellant did not file an administrative appeal with his employing agency. Upon appeal to the Commission, Mr. Boutz requested a personal hearing which was held at Oklahoma City, Oklahoma, on November 6, 1973.

PART II. ANALYSIS AND FINDINGS

By letter dated May 25, 1973, and received by the appellant the same date, Mr. Boutz was advised of a proposed personnel action which would remove him from the government service. This document, signed by Leon C. Daugherty, Superintendent, FAA Academy, Oklahoma City, Oklahoma, informed the appellant of the reasons for the proposed removal, allowing him a reasonable length of time,

fifteen calendar days, in which to file an administrative reply. He was furnished, with the proposal letter, material relied upon to support the proposed action and was allowed official time, 16 hours, to review the material. Provision was also made to grant additional review time, upon request.

The appellant replied in writing by letter dated June 9, 1973. After considering the reply, the agency advised Mr. Boutz by letter dated June 28, 1973, that the reasons set forth in the proposal of May 25, 1973, were sustained and decision had been made to remove him. The decision, signed by Ray H. Moody, for Leon C. Daugherty, was personally delivered to the appellant on June 28, 1973. The personnel action removing Mr. Boutz from his position was effective July 6, 1973. The appellant was retained in an active duty status during the advance written notice period, and was properly notified of his appeal rights in the matter.

In view of the above showing in the record, it must be concluded that the employing agency complied with the mandatory procedures required by controlling regulations. Thus, the merits of the appeal must be considered.

The reason for the proposed removal, as set forth in the agency's advance notice, reads as follows:

> "The reason for this proposed action is your refusal to accept a position change within the FAA which would carry out the terms of the established administrative return rights policy for Academy instructors.
>
> The facts are that about the time of your initial employment with the FAA on April 6, 1969, you signed FAA Form 3330.5, Employment Agreement for Academy Instructors. This agreement provided that an instructor's employment was subject to the provisions of directive 3330.6, Re-employment, Restoration and Return Rights. The agreement stipulated that re-employment rights were to the FAA's Southwest Region, that the parties shall abide by and complete all em-

ployment agreements between them, that an Academy instructor must complete one scheduled tour of duty (of two years duration) to be eligible for re-employment rights, and if the employee completed the tour of duty specified and wished to remain at the Academy for an additional tour, he shall execute a new employment agreement.

Because your first two-year tour of duty was to expire during April 1971, a new agreement was entered into. The second document you signed, indicating your agreement thereto, was FAA Form 3330.5.1, Employment Supplemental Agreement for Academy Instructors. This agreement stipulated that the employee agrees to serve an additional tour of duty of 24 months and shall have re-employment rights with the FAA in accordance with the terms and conditions of the Reemployment Handbook.

Directive 3330.6 entitled "Re-employment, Restoration, and Return Rights", was in effect at the time of your employment with the FAA in April 1969. This regulation was revised and republished under the date of July 27, 1971, and designated as 3330.6A. Neither regulation 3330.6 nor 3330.6A provides you the right of independent forfeiture of return rights at the end of two 2-year tours of duty at the Aeronautical Center and we are unwilling to accept such forfeiture.

From all the foregoing facts, it is clear that after the second 2-year tour of duty, Academy instructors are to be assigned from the FAA Academy to the region which has been determined to be their parent organization. Your second tour of duty ended on April 5, 1973. In order to fulfill the terms of the employment agreement, you were to be offered a position in the FAA's Southwest Region at the grade held at the time of exercising return rights or at the grade held immediately prior to the Academy assignment, whichever is higher.

By telegram dated March 14, 1973, a responsible representative of the Southwest Region offered you a position of Engineering Technician, GS-802-12, in the Electronics Engineering Branch, Fort Worth, Texas, a position which satisfies the terms of the return rights agreement. This offer was communicated to you about March 16, 1973. After receipt of the offer you had 30 days in which to decide whether to accept it. In response to such offer, you voiced your objections to the assignment in letters dated April 9 and 16, 1973, addressed to Superintendent, FAA Academy. In these two presentations, you objected to the job offered by the Southwest Region on grounds that it was not career progression and in your April 16 letter, you refused the job offer.

By letter dated May 4, 1973, and delivered to you on May 7, 1973, the Superintendent, FAA Academy, advised that alternatives to your relocation had been explored and that the only present recourse for you in order to retain your employment with the FAA was for you to fill the Southwest Region's job position. In that same letter the Superintendent set a deadline of May 21, 1973 for you to advise him in writing of your decision to comply with or refuse the assignment to the Southwest Region. In a subsequent conversation, this time limit for replying was extended to May 22, 1973. To date, we do not have your answer but only a demand that certain questions you have be answered. You have had ample time to explore and resolve any questions you may have had which you felt would be helpful in arriving at a decision. Your lack of a positive answer by the time limit set is construed as a declination to accept the relocation.

Therefore, since: (1) no adjustment which is to your satisfaction can be made; (2) you have completed the normally expected two tours of 2-years each; (3) we are not willing to accept forfeiture of return rights; (4) the position change and relocation to the South-

west Region would carry out the terms of the return rights agreement; (5) you have refused the position offered by the Southwest Region by your letter of April 16; (6) your reasons for declining the offer and your reasons for failing to give a positive answer as set out in representative Riley Brock's letter of May 21, 1973 are not acceptable to me; and (7) you were given a clear chance to change your mind and to accept the position offer by the Southwest Region which you did not do by the date specified, I propose to separate you from the FAA, which action we consider to be in the best interests of the service."

In support of their reason, the agency has amply documented the record, including the employment agreement, involved agency directives, and communications between the agency and appellant concerning offer of reassignment to the Southwest Region of the agency.

The appellant contends that his removal was arbitrary and capricious, not for such cause as will promote the efficiency of the service, and was accomplished without statuatory regulatory authority. Numerous contentions are made by the appellant concerning FAA Handbook 3330.6, Re-employment, Restoration and Return Rights of Department of Transportation, FAA, dated November 3, 1967, and Supplementing Orders AC 3330.8B, 3330.8A, and 3330.8, as well as Order 3330.6A dated July 27, 1971. Specifically, he contends that the departmental Re-employment, Restoration, and Return Rights (hereinafter referred to as the 3-R Program) is not authorized by statute, executive order or regulation, and generally challenges the program validity.

Further, the appellant contends that he was not fully informed by the agency concerning his rights and duties; that he was never actually reassigned but was merely offered a reassignment which he declined to accept; that the agency has not proved that he would have refused or failed to appear at his new duty station if reassignment had been effected; that in declining the reassignment offer he was

only complying with Handbook 3330.6, Chapter 3, Paragraph 42 and that in effect he has been removed for complying with that agency directive.

In those areas of personnel management in which the Civil Service Commission has been given regulatory authority, the Commission's policy is to delegate to agency heads the authority to effect personnel actions and to make personnel management decisions. Agencies are free to promulgate internal personnel instructions, directives, and regulations if these instructions do not conflict with law or Commission instructions under the jurisdiction of the Commission. Since our review of agency directives concerning the 3-R Program indicate no conflict with law or Commission regulation, it follows that no merit is seen in the appellant's contentions challenging validity of those regulations.

The evidence shows that as early as May 4, 1973, the appellant was advised in writing that his refusal to accept reassignment might result in his separation from employment. At the hearing, Mr. Boutz testified, ". . . I got the impression that the only way anybody was going to get any answers, was by refusing reassignment, getting terminated, and taking it to Court, or before the Civil Service Commission."

The appellant, having completed his second tour as an instructor at the FAA Academy, and under terms of the agency regulations, was offered, on March 14, 1973, reassignment to the position of Engineering Technician, GS-802-12, in the Electronics Engineering Branch, Southwest Region, FAA, Fort Worth, Texas. He repeatedly refused to accept the reassignment, resulting in the proposal to remove him issued May 13, 1973. Chapter 3, Paragraph 42.e.(2), Handbook 3330.6, provides:

> "If his reasons for declining are not acceptable to the Aeronautical Center or the parent organization, he *shall* return in accordance with the agency's authority to effect position changes." (Emphasis supplied)

In view of the foregoing, it must be held that the appellant did in fact refuse to accept a new assignment; that the assignment was within the administrative prerogatives of the agency; and that there is no evidence that the reassignment was made for the purpose of forcing appellant's resignation. We are of the opinion that the reason sustained by this review warrant the removal action imposed by the agency. Thus, the appellant's appeal is denied.

PART III. DECISION

Since the agency's reason for imposing the penalty of removal is supported by the evidence, it must be concluded that the removal action was warranted and effected for such cause as will promote the efficiency of the service. The removal action is therefore approved.

PART IV. NOTIFICATION OF FURTHER APPEAL RIGHT

Unless this decision is further appealed within 15 calendar days of the day on which it is received, it becomes the final decision of the U. S. Civil Service Commission. Any further appeal of this decision must be sent directly to:

Board of Appeals and Review
U. S. Civil Service Commission
Washington, D.C. 20415

Two copies of the letter of further appeal and all representations which the Board should consider beyond those now in the appeal file must be submitted within the 15 calendar day time limitation.

Attached is CSC Form 942 providing more detailed information about further appeals to the Civil Service Commission's Board of Appeals and Review.

For the Regional Director
CHARLES K. TINKLER
Regional Appeals Examiner

Attachment

EXHIBIT NO. 20

UNITED STATES CIVIL SERVICE COMMISSION
APPEALS REVIEW BOARD
Washington, D. C. 20415

DECISION

IN THE MATTER OF)
)
) TYPE CASE: REMOVAL
)
Robert W. Boutz)

INTRODUCTION

Through counsel, appellant submitted an appeal of the January 2, 1974, decision of the Commission's Dallas Regional Office which sustained the action of the Department of Transportation in remving him from his position as Electronics Engineer (Instructor), GS-855-12, at the Federal Aviation Administration (FAA) Aeronautical Center, Oklahoma City, Oklahoma, effective July 6, 1973.

STATEMENT OF THE CASE

Appellant was employed by the Department of the Air Force at Tinker Air Force Base, Oklahoma, when he accepted a transfer to the position of Electronic Engineer (Instructor) at the FAA Aeronautical Center in Oklahoma City, Oklahoma, effective April 6, 1969. In so doing, he signed an FAA Form 3330.5 "Employment Agreement for Academy Instructors," which stated that he would remain an Academy Instructor for a 24-month period and that his reemployment rights with the FAA were to be goverened by Administrative Handbook 3330.6.

Toward the end of his tour of duty he signed another agreement extending his employment as an instructor for an additional 24 months, ending April 1973, which agreement became part of the original one.

In March 1973, the FAA offered appellant the position of Engineering Technician, GS-802-12, in Fort Worth, Texas, as his next duty assignment, consistent with the terms of his employment agreement. He requested that he not be required to accept the position, and on April 16, 1973, he specifically refused to accept the position. On May 4, 1973, he was informed that no other alternatives to the position offered were available and that his assignment to that position was directed, with the caveat that refusal to comply with the directive might result in his separation from the service.

Appellant requested certain information relative to the employment agreement, the agency's authority, and the possible separation from the agency. A time limit was set for appellant's final reply to the position offered and when no answer was received, he was notified by letter of May 25, 1973, of the proposal to remove him for "refusal to accept a position change within the FAA which would carry out the terms of the established administrative return rights policy for Academy Instructors."

A written reply to the proposal was submitted by letter of June 9, 1973, and on June 28, 1973, appellant was notified of the agency's decision to remove him based upon his improper refusal to accept a position change which would have been in the best interests of the service.

An appeal was then taken to the Dallas Regional Office of the Civil Service Commission.

FIRST LEVEL DECISION

A hearing was held pursuant to appellant's request. On January 2, 1974, the Regional Office issued its decision to sustain the agency's action. The decision was based on its findings that the mandatory procedural requirements of part 752-B of the Commission's regulations had been met; that the agency's authority to take the actions it did was clear; that the program under which appellant was to be

reassigned from his position as Academy instructor was a valid program; that his refusal to accept the reassignment was in violation of that program, by which he had earlier agreed to be bound; and that his removal for that refusal under these circumstances was warranted.

REPRESENTATIONS TO THE BOARD

On appeal to the Board, appellant contends that the agency did not have discretion under the employment agreement to effect his removal, only his involuntary reassignment; that the 3-R program (that is, Handbook 3330.6 to which the employment agreement refers) has changed so in interpretation that it is an arbitrary and capricious program because a forced rotational practice was not enforced until 1971; that the agency has not stated with particularity the reason for his removal but rather, has vacillated between a cause grounded in breach of contract for failure to carry out the terms of his employment agreement and one grounded in his refusal to accept a reassignment; that he was never reassigned by the agency and that any reassignment made as an administrative reassignment would have been unauthorized by Handbook 3330.6; that the Commission's refusal to allow several witnesses appellant requested kept him from rebutting the agency's repeated statements that the 3-R program was a stable and consistently administered program; and that both the agency and the Dallas Regional Office have repeatedly failed to answer his questions and contentions.

The agency was given the opportunity to respond to appellant's contentions and did so by letter of March 14, 1974.

ANALYSIS AND FINDINGS

A review of the record realtive to the procedures followed by the agency in bringing about appellant's removal reveals that all of the mandatory procedural requirements of part 752-B of the Civil Service regulations were followed in this case.

On the merits of the removal action, appellant has raised several contentions. The Regional Office found that appellant had refused a valid reassignment which would have been in keeping with the terms of the employment agreement which he signed and, thus, that his removal was warranted as being for such cause as would promote the efficiency of the service. A review of the entire record with emphasis on the terms of the employment agreement and Handbook 3330.6 reveals that the Region's decision is supported by substantial evidence and should be sustained.

The employment agreement which appellant signed refers to the agency's Handbook 3330.6, even though Handbook 3330.5A had been implemented by the time this appeal was taken. Since the agreement refers only to 3330.6, it is that handbook which must govern here. The agreement itself states that "Instructors are normally expected to serve two tours at the Academy." The supplemental agreement, signed in 1971, indicates that to extend a tour of duty beyond 4 years in total, the concurrence of both the Aeronautical Center and the parent organization are required. While these indicate that two tours of duty are all that will be allowed at the Academy, the language is not clearly a directive to return after two tours, as appellant points out. However, turning to Handbook 3330.6, the Board notes that paragraph 42.b provides that:

> After completing two tours of duty an eligible employee shall be returned to his parent organization, except as follows:
>
> (1) The employee, the Aeronautical Center, and the parent organization may mutually agree on a third tour and on the extension of reemployment rights for the duration of the third tour.
>
> (2) If the parent organization disapproves a third tour, the employe may, with the concurrence of the Aeronautical Center, forfeit reemployment rights and remain at the Academy.

From this it is clear that without the approval of the agency, the employee cannot unilaterally decide to remain at the Academy. Therefore, the agency had the right to refuse appellant's request to remain at the Academy and to offer him a position in the parent region as provided by paragraph 42c.

While it is true, as appellant states, that 42e does not give the agency direct authority to remove him if he refuses the offer for reasons found unacceptable to the agency, "he shall return in accordance with the agency's authority to effect position changes." When read in conjunction with section 335.102 of the Civil Service regulations, which states in part that "an agency may . . . (p)romote, demote, or reassign a career or career-conditional empl ee . . .", the agency's authority is given a broader scope. Under the regulations, the agency may remove an employee for refusing a reassignment, and this is the authority referred to by the FAA under the provisions of paragraph 42c(2) of the Handbcok 3330.6.

Appellant contends that the program of return rights is administered arbitrarily, that it has changed in interpretation, and that the Commission's refusal to allow several witnesses to testify to this in an attempt to counter the agency's assertion that the program was an established one is erroneous. The Board's review indicates that the Hearing Examiner at the Region was correct in excluding those witnesses, since the issue is not whether the program's interpretation has changed over the years, but only whether the agency had authority to do what it did in the case of this particular employee. Appellant's claim that the program has changed over the years is not denied by the agency. However, the provisions of Handbook 3330.6, quoted earlier, indicate that the agency's action was authorized. Further, appellant admitted that he had "looked into it" (Transcript, pp. 160-161) before signing the employment agreement, so that he should have been on notice that the agency was empowered to effect his reassignment and relocation.

Appellant also contends that he cannot properly be removed for failure to accept reassignment when the agency did not really reassign him. The Board finds this contention to be without merit. In the first place, the agency's letter to him of May 4, 1973, directed his reassignment. Appellant repeatedly stated that he declined to accept, not that if he were reassigned, he would reject the offer at a future time. The only agency action which would have been a more formal recognition of the reassignment would have been the cutting of an SF-50. Under the circumstances, the Board does not find that such a useless gesture was necessary. In addition, it has been recognized by the courts that no SF-50 need be cut in order to sustain a removal for failure to accept reassignment; it is sufficient that the reassignment is offered and that the employee refuses it.

Another contention raised to the Board is that the agency has vacillated on its cause of action in that it has at times stated that the removal was based on breach of contract in that he failed to carry out the terms of his employment agreement and that at other times it stated that the grounds were his refusal to accept transfer. The only mandatory requirements in relation to this are those of section 752.202 (a) and (f) which require that the advance notice of proposed removal state the reasons for the proposal and that final decision be based on those reasons. In this regard, the Board finds that the agency has not violated any of appellant's rights. The notice of proposed removal, dated May 25, 1973, stated that the reason for the proposal was that appellant refused a position change that would be in keeping with the terms of Handbook 3330.6. The notice of decision stated that this reason was found sustained. Since the reason given encompasses both a breach of the employment agreement and refusal to accept transfer, the Board finds no error in the agency's action.

Appellant states that his refusal of the offered position was consistent with Handbook 3330.6, specifically paragraph 41c, which states that:

> An employee who is eligible for reemployment rights must execute a new employment agreement within six months after the completion of his most recent tour of duty. Otherwise, his reemployment rights expire.

Appellant contends that under this paragraph, he has the option of allowing his reemployment rights in the region to expire and continuing in service at the Academy. Standing alone, this paragraph might seem to authorize such action, but when read in the context of the other parts of the agreement, supra, it is clear that this paragraph only states the rule that the right to return to the region will be lost if the employee does not return after completion of his last tour at the academy. It does not, however, alter the agency's requirement (paragraph 42) that the Academy and the parent organization concurs before the employee is allowed to remain when two years at the academy have been completed.

Based upon these findings, the Board concurs in the Region's decision that the agency had the authority to reassign appellant, that he refused the reassignment, and that in light of Handbook 3330.6, his removal was for such cause as would promote the efficiency of the service.

DECISION

Accordingly, the decision of the Commission's Dallas Regional Office is hereby affirmed.

As provided by section 772.307(c) of the Civil Service regulations, decisions of the Board are final and there is no right of further administrative appeal.

For the Commissioners:

(s) *William P. Berzak*
Chairman

July 2, 1974

[APPENDIX]

EXHIBIT NO. 21

UNITED STATES CIVIL SERVICE COMMISSION
Washington, D. C. 20415

FEB 2 1976

Mr. Riley Brock
Attorney at Law
3825 Northwest 23rd Street
Oklahoma City, Oklahoma 73107

Dear Mr. Brock:

This is in further response to your letters of December 12, 1975 and January 13, 1976, with attachments, requesting the Commissioners of the Civil Service Commission to reopen and reconsider, under the provisions of Section 772.308 (a) (2) and (3) of the Civil Service regulations, the appeal case of Mr. Robert W. Boutz which was decided by the Commission's Appeals Review Board on July 2, 1974.

Decisions of the Appeals Review Board are final decisions of the Civil Service Commission from which there is no further right of administrative appeal. Although the Commissioners may, in their discretion, under the provisions of Section 772.308 of the Civil Service regulations, reopen and reconsider a previous decision of the Appeals Review Board, they will not do so for the purpose of readjudicating a case and substituting their judgment for that of the Board on findings of fact and other issues of the case in the absence of new evidence or written argument which clearly meets the criteria set forth in Section 772.308 of the Civil Service regulations.

We have carefully considered the information submitted in support of the request to have Mr. Boutz's case reopened and have reviewed the case file. The file reflects that the issues pertinent to the adjudication of Mr. Boutz's appeals have been fully, carefully and exhaustively considered. We

find that the information submitted in support of the request for reopening is not sufficient to indicate error in the findings or decision of the Appeals Review Board or to meet any of the established criteria for reopening a previous decision of the Appeals Review Board set forth in Section 772.308 of the Civil Service regulations. We concur in the analysis and findings of the Appeals Review Board.

In making our review we noted your contention that the agency should have followed the reduction-in-force regulations in proposing Mr. Boutz's change in assignment. The record in the case however, shows that the change in assignment was proposed under the "3-R" program or "Return-Rights" rotation program for instructors at the FAA Academy in Oklahoma City. The reduction-in-force regulations are applicable only in certain cases when an employee is released from his competitive level when the release is required because of lack of work, shortage of funds, reorganization, reclassification due to changes in duties, or the exercise of reemployment rights or retention rights as stated in Section 351.201 of the Civil Service regulations. None of these factors were present in Mr. Boutz's case. A change in assignment under an agency rotation program such as in this case is not considered to be a reduction-in-force action under the Civil Service regulations.

We have also noted your contention that the proposed change in assignment would have constituted a reduction in rank and that the Commission's regulations for processing adverse actions should have been applied. However, under the agency "3-R" rotation program for instructors, the record reflects that instructors who are rotated under the program are entitled only to a change in assignment, that results in no reduction in grade. Since the position offered Mr. Boutz was at the GS-12 grade level which was the same as the grade level of his position at the FAA Academy, it follows that the offer was a proper offer under the terms of the "3-R" program and the question as to whether the position offered was of a lesser rank is not pertinent to the adjudication of this case.

With regard to your contention that Mr. Boutz did not decline the assignment offered to him the record shows that this issue was discussed in the decision of the Dallas Field Office of the Federal Employee Appeals Authority, which decision was affirmed by the Appeals Review Board. Since the undisputed evidence in the file shows that Mr. Boutz did not accept the position change offered, we must concur in the previous analysis and finding on this issue.

With regard to the issue you raise as to whether Mr. Boutz's removal was for cause which promotes the efficiency of the service, we concur in the determination of the Appeals Review Board that the failure of Mr. Boutz to accept a change in assignment under the agency rotation program as directed by the agency does constitute a cause for removal which promotes the efficiency of the service.

In view of the above we must conclude that no valid basis has been presented upon which this case may be reopened and the request for reopening must be denied.

Having received a final decision of the Civil Service Commission on his appeal, Mr. Boutz has exhausted his administrative appeal rights within the Commission and the case is considered to be closed.

In view of the strong feelings expressed by and on behalf of Mr. Boutz in this matter, I regret that this reply could not be favorable.

For the Commissioners:

Sincerely yours,
(s) *Robert B. Bates*
Asst. to the Commissioners (Appeals)

EXHIBIT NO. 22

UNITED STATES CIVIL SERVICE COMMISSION
Washington, D. C. 20415

May 27, 1976

Mr. Riley Brock
Attorney at Law
3825 Northewest 23rd Street
Oklahoma City, Oklahoma 73107

Dear Mr. Brock:

This is in reply to your letters of May 20, 1976, addressed to Chairman Robert E. Hampton and Commissioner L. J. Andolsek, requesting for a second time that the Commissioners of the Civil Service Commission reopen and reconsider the appeal case of Mr. Robert W. Boutz which was decided by the Commission's Appeals Review Board on July 2, 1974. This also refers to the long distance telephone conversation of May 24, 1976, between Mr. Boutz in Oklahoma City and Commissioner Andolsek and myself in Washington, D.C.

In your letter you contend that the deciding officials in Mr. Boutz's case have not yet answered certain of Mr. Boutz's contentions, such as those regarding his ". . . entitlement to reduction-in-force proceedings, his entitlement to Displaced Employee protection and his contention that the reassignment proposed by the Academy Superintendent involved a reduction in rank." You also contend that no authority has been cited which permits an administrative program such as the 3-R Program.

With regard to the issue raised regarding Mr. Boutz's entitlement to Displaced Employee protection, this is not a proper issue for consideration in this appeal case. The appeal in this case was from the action taken by the Federal Aviation Administration removing Mr. Boutz from his posi-

tion of Electronics Engineer (Instructor), GS-855-12, Aeronautical Center, Oklahoma City, Oklahoma, effective July 6, 1973. Thus, we may consider only those issues raised in connection with the removal action.

With regard to your contention that the deciding officials in Mr. Boutz's appeal case have not answered his contention that he was entitled to reduction-in-force proceedings in connection with the change in assignment proposed by the agency in his case, the file shows that this contention was discussed in my letter to you of February 2, 1976. Part 351 of the Civil Service regulations pertains to reduction-in-force actions in the Federal service.

As pointed out in my letter of February 2, 1976, the reduction-in-force regulations are applicable only in certain cases when an employee is released from his competitive level when the release is required because of a lack of work, shortage of funds, reorganization, reclassification due to changes in duties, or the exercise of reemployment rights or retention rights as stated in Section 351.201 of the Civil Service regulations. None of these factors were present in Mr. Boutz's case. Since a reduction-in-force situation did not exist, it follows that the reduction-in-force regulations were not applicable to the change in assignment proposed in Mr. Boutz's case.

With regard to your contention that the deciding officials have not considered Mr. Boutz's contention that the proposed change in assignment would have constituted a reduction in rank and that the Commission's regulations for processing adverse actions (Part 752-B of the Civil Service regulations) should have been applied, this contention was also discussed in my letter to you of February 2, 1976. As pointed out in my letter, under the agency's "3-R" Program, instructors at the FAA Academy are entitled only to a change in assignment that results in no reduction in grade or pay. Since Mr. Boutz was offered a position at the GS-12 level which was the same as the grade level of his po-

sition at the FAA Academy, it follows that the offer was a proper offer under the terms of the "3-R" Program and the question as to whether the position offered was of a lesser rank is not pertinent to the adjudication of this case.

With regard to your contentions that both Part 351 of the Civil Service regulations pertaining to reduction-in-force actions and Part 752-B of the Civil Service regulations pertaining to adverse actions were applicable in Mr. Boutz's case, there are no situations in which both the reduction-in-force and adverse action procedures are applicable and could be applied simultaneously to the same proposed change in assignment. The applicability of one of the two procedures precludes the use of the other procedure in any given case.

With regard to your contention that the deciding officials have summarily dismissed and not answered Mr. Boutz's contentions questioning the authority of the agency to reassign him under the "3-R" Program, the file shows that the issue was discussed by the Dallas Field Office of the Federal Employee Appeals Authority on pages 4 and 5 of its decision dated January 2, 1974. That decision was affirmed by the Appeals Review Board in its decision of July 2, 1974. The Dallas Field Office decision is quoted in pertinent part as follows:

> "In those areas of personnel management in which the Civil Service Commission has been given regulatory authority, the Commission's policy is to delegate to agency heads the authority to effect personnel actions and to make personnel management decisions. Agencies are free to promulgate internal personnel instructions, directives, and regulations if these instructions do not conflict with law or Commission instructions under the jurisdiction of the Commission. Since our review of agency directives concerning the 3-R Program indicate no conflict with law or Commission regulation, it follows that no merit is seen in the appel-

lant's contentions challenging validity of those regulations.

"The evidence shows that as early as May 4, 1973, the appellant was advised in writing that his refusal to accept reassignment might result in his separation from employment. At the hearing, Mr. Boutz testified, '. . . I got the impression that the only way anybody was going to get any answers, was by refusing reassignment, getting terminated, and taking it to Court, or before the Civil Service Commission.'

"The appellant, having completed his second tour as an instructor at the FAA Academy, and under terms of the agency regulations, was offered, on March 14, 1973, reassignment to the position of Engineering Technician, GS-802-12, in the Electronics Engineering Branch, Southwest Region, FAA, Fort Worth, Texas. He repeatedly refused to accept the reassignment, resulting in the proposal to remove him issued May 25, 1973. Chapter 3, Paragraph 42.e.(2), Handbook 3330.6, provides:

> 'If his reasons for declining are not acceptable to the Aeronautical Center or the parent organization, he shall return in accordance with the agency's authority to effect position changes.'

"In view of the foregoing, it must be held that the appellant did in fact refuse to accept a new assignment; that the assignment was within the administrative prerogatives of the agency; and that there is no evidence that the reassignment was made for the purpose of forcing appellant's resignation. We are of the opinion that the reason sustained by this review warrants the removal action imposed by the agency. Thus, the appellant's appeal is denied."

Each Federal agency is given certain missions by the Congress and certain resources with which to accomplish its

missions. In deciding how best to accomplish a given mission, each agency has the authority to decide what positions are necessary to accomplish the mission and when they will be created, filled or abolished, and when to make changes in personnel assignments. In Mr. Boutz's case and with regard to instructor positions at the FAA Academy, the record shows that the management of the agency determined that in order to have a viable Instructor force, it was in the best interest of the agency to provide for the rotation of Instructor personnel out of Instructor positions at the end of two-year periods of time. As pointed out by the Dallas Field Office, such a program does not conflict with law or Commission instructions under the jurisdiction of the Commission. In this connection, even without the existence of the "3-R" Program, the agency has the authority to effect changes in personnel assignments such as the change in assignment proposed in Mr. Boutz's case under its general authority to reassign personnel. This is true even though the change in assignment involves a reassignment to a position in another geographical location. See the case of *Wilfred Handler* v. *Secretary of Labor*, decided April 7, 1967 by the U.S. Court of Appeals for the District of Columbia Circuit.

With further regard to Mr. Boutz's contention that the change in assignment proposed in his case would have constituted a reduction-in-rank and that adverse action procedures were therefore required, there is no prohibition against changing an employee to another position at the same grade and pay even though the change results in a reduction-in-rank if the action is for such cause as will promote the efficiency of the service. Administrative reasons such as those given by the agency for establishing the "3-R" program are considered to constitute such cause for a change in assignment as will promote the efficiency of the service. With further regard to the question as to whether the agency followed the required procedures in Mr. Boutz's case, this was also discussed by both the Dallas

Field Office and the Appeals Review Board in their respective decisions. As pointed out by the Appeals Review Board, it was not necessary for the agency to actually cut a Standard Form 50, Notification of Personnel Action in order to sustain a removal action for failure to accept an agency directed reassignment. There is nothing in the regulations that requires a hearing, etc., before a proposed reassignment. Also, since Mr. Boutz was afforded full procedural rights in connection with the removal action, it is apparent that he was given the opportunity and did raise the issue as to whether the proposed change in assignment under the "3-R" Program was proper in his case.

Also, as pointed out by the Dallas Field Office, Mr. Boutz was aware that under the agreement he signed in connection with his employment as an Instructor, he could be changed to another position at the same grade in his parent organization and that it was discretionary with the agency as to whether he would be given successive tours of duty. It is also clear from the agreement that the approval of the management of the agency was necessary in each individual case in order to obtain a third two-year tour of duty at the FAA Academy. The fact that all Instructors were not returned to their parent organization at the end of their second or third tour of duty does not alter the fact that it was within the discretion of the management of the agency, taking into consideration the pertinent facts in each case, to decide which Instructors would be retained and which would not be retained. It is also clear from the record that being available for a change in assignment to another geographical area was a condition of employment with the agency.

In view of the above and as stated in my letter of February 2, 1976, we find no valid basis on which this case may be reopened and the request for reopening must therefore again be denied. Under the circumstances, the case is considered to be closed and any further appeal remedies

Mr. Boutz may have, if he wishes to pursue them, are in the United States Courts.

Again, I regret that we could not furnish you a favorable reply.

For the Commissioners:

Sincerely yours,

(s) *Robert B. Bates*
Assistant to the
Commissioners (Appeals)

EXHIBIT NO. 23

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Nov. 3, 1978]

ROBERT W. BOUTZ, Plaintiff,	)	
v.	)	Civil Action No. 77-1287
FEDERAL AVIATION ADMINISTRATION, Defendant.	)	

ORDER

Upon consideration of defendant's unopposed motion for summary judgment, and the entire record herein, and it appearing to the Court that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law, it is by the Court this *3rd* day of November, 1978,

ORDERED that defendant's motion for summary judgment be and it hereby is granted and the instant action is hereby dismissed, for the following reasons:

(1) Plaintiff's allegations of procedural irregularity at the administrative hearing held by the Civil Service Commission lack merit.

(2) The decision of the Appeals Board of the United States Civil Service Commission is not arbitrary, capricious, or an abuse of discretion in determining that plaintiff was bound by the provsions set forth in the FAA's Handbook on Reemployment, Restoration, and Return Rights [FAA Form 3330.6], ("Handbook"); that under those provisions (Sections 42.b, 42.e(2)) plaintiff was required to return to a position in the FAA Southwest Region at the end of his two terms at the FAA Academy; that the position offered plaintiff in the FAA Southwest Region was at the same grade held by plaintiff at the FAA Academy, and at the same or a higher grade than held by plaintiff prior to accepting the Academy position as required by Sections 39.a and 43.b of the Handbook; that plaintiff rejected that position with reason to know that such action on his part would lead to the termination of his employment with the FAA; and that the removal of plaintiff from employment with the FAA, effective on July 6, 1973, was for cause as promoting the efficiency of the service. *See* 5 C.F.R. §§ 335.102, 752.104; *Handler* v. *Secretary of Labor*, 379 F.2d 88 (D.C. Cir. 1967).

(s) *Garland A. Gesell*
UNITED STATES DISTRICT JUDGE

EXHIBIT NO. 24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Nov. 3, 1978]

ROBERT W. BOUTZ, Plaintiff,	)	
v.	)	Civil Action No. 78-1108
FEDERAL AVIATION ADMINISTRATION, Defendant.	)	

ORDER

Upon consideration of defendant's unopposed motion to dismiss, or in the alternative, for summary judgment, and of the entire record herein, it is by the Court this *3rd* day of November, 1978,

ORDERED that defendant's motion be and the same hereby is granted and the instant action be and the same hereby is dismissed, for the following reason:

Denial of severance pay to plaintiff was justified by 5 C.F.R. § 550.705, by the Agreement for Academy Instructors (FAA Form 3330.5) into which he entered in April 1969, by the Employment Supplemental Agreement for Academy Instructors (FAA Form 3330.5.1) into which he entered in January 1971, and by the FAA's Handbook on Reemployment, Restoration, and Return Rights (FAA Form 3330.6).

(s) *Garland A. Gesell*
UNITED STATES DISTRICT JUDGE

[APPENDIX]

EXHIBIT NO. 25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Nov. 9, 1978]

ROBERT W. BOUTZ, Plaintiff,	)	
v.	)	Civil Action No. 77-1287
FEDERAL AVIATION ADMINISTRATION, Defendant.	)	

ORDER

On November 3, 1978, this Court entered an Order granting defendant's motion for summary judgment, stating the reasons for such action. Subsequent to the Court's ruling on November 3, the Clerk's Office accepted for late filing the plaintiff's response to defendant's motion for summary judgment. The Court has carefully considered this filing, together with the entire record herein, and reaffirms its ruling of November 3, 1978, granting the defendant's motion for summary judgment.

SO ORDERED.

(s) *Garland A. Gesell*
UNITED STATES DISTRICT JUDGE

November 9, 1978.

EXHIBIT NO. 26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Nov. 9, 1978]

ROBERT W. BOUTZ, Plaintiff,	)	
v.	)	Civil Action No. 78-1108
FEDERAL AVIATION ADMINISTRATION, Defendant.	)	

ORDER

On November 3, 1978, this Court entered an Order granting defendant's motion for summary judgment, stating the reasons for such action. Subsequent to the Court's ruling, on November 7, the Clerk's Office accepted for late filing the plaintiff's response to defendant's motion for summary judgment. The Court has carefully considered this filing, together with the entire record herein, and reaffirms its ruling of November 3, 1978, granting the defendant's motion for summary judgment.

SO ORDERED.

(s) *Garland A. Gesell*
UNITED STATES DISTRICT JUDGE

November 9, 1978.

[APPENDIX]

EXHIBIT NO. 27

United States Court of Appeals

FOR THE DISTRIQT OF COLUMBIA CIRCUIT

[Filed Jan. 27, 1981]

No. 79-1178
No. 79-1179

September Term, 1980

ROBERT W. BOUTZ,
Appellant,

v.

FEDERAL AVIATION ADMINISTRATION

Civil Action
Nos. 77-1287
and 78-1108

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before ROBINSON, MacKINNON and WALD,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the court. *See* Local Rule 13(c).

On consideration of the foregoing, it is ORDERED and ADJUDGED by this Court that the judgment appealed from in this cause be and hereby is affirmed.

Per Curiam for the Court

(s) *George A. Fisher,* Clerk

EXHIBIT NO. 28

[ACADEMY HANDBOOK 3330.6]

CHAPTER 3. REEMPLOYMENT OF ACADEMY INSTRUCTORS

36. *COVERAGE.* This chapter covers administrative reemployment rights for employees who occupy instructor positions at the FAA Academy.

37. *DEFINITION.* As used in this chapter, the term instructor means an employee at the FAA Academy, at the level of section chief, its equivalent or below, who is engaged in the conduct, supervision, evaluation or control of technical training (excluding management training, general training, and instructor training), and who performs one or more of the following duties as a regular recurring part of his assignment.

a. Instructing students in resident courses, or in nonresident training programs conducted by the Academy in field locations, or in the FAA directed study program.

b. Planning and developing training programs.

c. Developing course content and related training material for use in resident training, directed study, and facility training programs.

d. Serving as technical assistant to the head of an organizational unit at the Academy which has responsibility for technical training.

e. Evaluating the conduct of resident, directed study and facility technical training programs.

38. *REFERENCE.* FAA Order 3410.7, Academy Instructor Placement and Development Plan.

39. *EMPLOYEE ELIGIBILITY.*

a. *Employees Who Complete Four Consecutive Years* as an instructor are eligible for reimployment rights at the grade held at the time of exercising such rights, or at the grade held immediately prior to accepting the Academy assignment, whichever is higher. If the employee was downgraded while at the Academy as a disciplinary measure, he is eligible at a grade no higher than that held at the time of exercising his reemployment rights.

b. *Employees Who Complete At Least Two But Less Than Four Years* are eligible for reemployment rights at the grade held immediately prior to accepting the Academy assignment. If the employee was recruited from outside the FAA, he is eligible for the grade level assigned at the time of recruitment.

c. *Employees Who Complete Less Than Two Years* are not eligible for reemployment rights.

d. *Employees Recruited From Outside the FAA.* A new appointee is eligible for reemployment rights only if his selection is endorsed by his parent organization. It is recommended that reemployment rights be granted except when the parent organization has avilable and can provide a well-qualified FAA employee as an alternative which would make outside recruitment unnecessary.

e. *Civil Service Rules and Regulations.* Unless exceptions are approved by the Civil Service Commission, an instructor must meet all civil service requirements for the position change involved in the exercise of reemployment rights.

40. *TOURS OF DUTY.* A standard tour of duty for instructors is two years.

41. *EMPLOYMENT AGREEMENT.*

a. Persons appointed to instructor positions who have reemployment rights under the provisions of this chapter are required to sign an employment agreement. (FAA Form 3330-5)

b. Employment agreements will be executed to correspond with a standard two year tour of duty.

c. An employee who is eligible for reemployment rights must execute a new employment agreement within six months after the completion of his most recent tour of duty. Otherwise, his reemployment rights expire. (FAA Form 3330-5.1)

d. The Director of the Aeronautical Center is authorized to waive the remaining time covered by an employment agreement for reasons which are deemed to be in the best interests of the FAA.

42. *SCHEDULING EMPLOYEES FOR RETURN TO THEIR PARENT ORGANIZATIONS.*

Employees shall be restored to their parent organization in accordance with the provisions of this section. When flexibility permits, careful consideration should be given, not only to the needs of the Academy, but to the needs of the parent organization and the personal desires of the employee as well. In the event that an instructor is about to be adversely affected by reduction in force or reorganization, and wishes to return instead, the rules of paragraph 43.d., apply.

a. *After Completing One Tour.* Employees are normally expected to serve two tours. However, the Director of the Aeronautical Center may disapprove a second tour and return the employee to his parent organization if it is in the best interests of the FAA to do so.

b. *After Completing Two Tours.* After completing two tours of duty an eligible employee shall be returned to his parent organization, except as follows:

(1) The employee, the Aeronautical Center, and the parent organization may mutually agree on a third tour and on the extension of reemployment rights for the duration of the third tour.

(2) If the parent organization disapproves a third tour, the employee may, with the concurrence of the Aeronautical Center, forfeit reemployment rights and remain at the Academy.

c. *After Completing Three Tours.*

(1) When an employee has served three tours of duty he may be returned to his parent organization, or he may forfeit his reemployment rights and remain at the Academy.

(2) Return rights may be extended and preserved beyond the third tour by application to the Director of Personnel. The request should show that the parent organization concurs and should reflect any special arrangements or agreements made under subparagraph (4) below. If the Director of Personnel approves, return rights will be extended for one additional tour.

(3) There is no limit to the number of extensions which may be approved providing a new extension is negotiated upon completion of each succeeding tour.

(4) When extensions are approved, the grade level to which the employee has rights to return may vary by agreement depending on whether the extension is approved primarily in the interest of the FAA or for the personal benefit of the employee. In any event, the employee shall

have reemployment rights to a grade not less than that held upon completion of his third tour.

d. *When to Apply.* Employees must apply for restoration not less than 90 nor more than 120 days before the end of their tour of duty if they wish to exercise return rights.

e. *Accepting the Offer.* Within 30 days of the receipt by the employee of the parent organization's offer of restoration, the employee must accept or decline the offer. If he declines, the following alternatives apply:

(1) If his reasons for declination are acceptable to the Aeronautical Center and the parent organization, he may:

(a) Forfeit return rights and remain at the Academy, or

(b) Apply for an extension under the provisions of subparagraphs b., or c. above.

(2) If his reasons for declining are not acceptable to the Aeronautical Center or the parent organization, he shall return in accordance with the agency's authority to effect position changes.

43. *RESTORATION TO PARENT ORGANIZATIONS.*

a. *Academy Instructors Who do Not Serve a Second Tour.*

(1) Instructors recruited from within FAA who do not serve a second tour shall be returned to their parent organizations at the grade they had immediately prior to the time of recruitment for an Academy assignment.

(2) Instructors recruited from outside the agency who do not serve a second tour shall be returned to their parent organizations at the grade assigned at the time of recruitment.

(3) Exceptions to subparagraphs (1) and (2) above may be made by mutual agreement of the Academy and the parent organization.

(4) A change to a lower grade under subparagraphs (1) and (2) above is an adverse action requiring 30 days notice, an opportunity to reply, and a letter of decision. (See Handbook OA 3770.2 and Part 751 of the Civil Service Regulations). Such notices should be sympathetic and appreciative, including a positive statement that the action does not reflect unfavorably on the employee's performance when appropriate. The notice may be based on the completion of the employment agreement as the reason for the change to a lower grade.

b. *Instructors Who Complete a Second Tour.* Employees eligible for return rights after serving two or more tours shall be returned at the grade held at the time of exercising return rights or the grade held immediately prior to the time of recruitment, whichever is higher.

c. *Time Limit for Response.* The parent organization shall respond to an official request for restoration within 30 days after it is received.

d. *Effect of Reduction in Force.* If an employee is to be adversely affected by reduction in force or reorganization, he shall be offered the alternative of returning at his present grade to his parent organization through the exercise of reemployment rights.

e. *Placing the Employee.*

(1) The parent organization shall make every effort to place the employee in a suitable permanent position, thus eliminating the necessity for a second move.

(2) In the interest of flexibility and optimum employee utilization, the following alternatives and options are permitted:

(a) If the parent organization does not have an appropriate permanent assignment available, the employee may remain at the Academy until such a vacancy occurs, PROVIDED such an arrangement is satisfactory to the employee, the Aeronautical Center, and the parent organization. Under such an arrangement, the first available vacancy shall be offered the employee. If either party disagrees, the employee shall be returned in accordance with other provisions of this handbook.

(b) The employee may be placed at a grade lower than that to which he is entitled under the provisions of this handbook, if he voluntraily requests the preferred assignment in accordance with paragraph 400.a., PT P 3330.9 and provided he is fully informed of his rights to the higher grade.

(c) If the parent organization has no permanent position to offer the employee, it should solicit placement assistance from other employing jurisdictions. Any offer of employment in an employing jurisdiction other than that to which return rights are attached must be acceptable to the employee.

(d) As a last resort, the parent organization may borrow an extra position from the Office of Budget for use while it is absorbing the returnee into its regular authorized complement.

44. *DETERMINATION OF PARENT ORGANIZATION.*

a. *General Rule.* Except as provided in subparagraph b. below, the parent organization of an employee is as follows:

(1) The FAA employing jurisdiction from which the employee was selected for an Academy assignment, or

(2) The domestic region in which the employee's actual place of residence was located if the employee was recruited from outside the agency for initial assignment to an instructor's position.

(a) If an eligible employee was recruited from the departmental service of another agency, the FAA Washington Headquarters is the parent organization.

(b) When Washington Headquarters is the parent organization, the Manager of Headquarters Operations shall coordinate with appropriate offices or services in determining whether a new employee shall be granted return rights under the provisions of paragraph 39.d.

b. *The Effect of Agency Reorganizations.*

(1) When in accordance with a determination order, activities or positions move geographically to other employing jurisdictions where no similar activity was located before, administrative return rights transfer with the activity. Example: the transfer of the Central Altitude Reservation Facility (CARF) from Kansas City to Washington. Former employees of CARF who accepted instructor assignments while the facility was located in Kansas City have return rights to the Washington Headquarters rather than the Central Region.

(2) When activities or positions have not moved, but the geographic area in which they were located has shifted from one employing jurisdiction to another, return rights transfer to the employing jurisdiction currently responsible for the geographic area. Examples: The transfer of Montana from the Western Region to the Central Region, and the transfer of New Mexico from the Western to the Southwest Region. Under these examples, return rights are transferred to the Central Region and Southwest Region respectively.

45. *EMPLOYEES EXPECTED TO EXERCISE RETURN RIGHTS REPORT (RIS: PT 3330-6).*

Beginning Januaury 1, 1968, and each six months thereafter, the operating personnel office servicing the Academy shall compile a list of employees who are expected to return to their parent organization during the succeeding 12 months. Each list must be complete within itself even though the same names appear on one or more succeeding reports. A copy of the listing shall be submitted to each employing jurisdiction affected with an information copy to the Career System Division Office of Personnel. The following information shall be submitted for each employee listed:

a. Name.

b. Present position title, series, and grade.

c. Grade level to which employee is expected to return.

d. The employing jurisdiction to which rights are attached.

e. Employee's actual place of residence if hired from outside the agency for initial assignment to an instructor's position.

f. The approximate date the employee is expected to return.

46. - 50. *RESERVED.*

EXHIBIT NO. 29

[ACADEMY HANDBOOK 3330.6A]

CHAPTER 3. REEMPLOYMENT OF ACADEMY INSTRUCTORS

26. *COVERAGE.* This chapter covers administrative return rights for employees who occupy instructor positions at the FAA Academy.

27. *DEFINITION.* As used in this chapter, the term instructor means an employee at the FAA Academy, at the level of section chief, its equivalent or below, who is engaged in the conduct, supervision, evaluation or control of technical training (excluding management training, general training, and instructor training), and who performs one or more of the following duties as a regular recurring part of his assignment.

a. Instructing students in resident courses, or in nonresident training programs conducted by the Academy in field locations, or in the FAA directed study program.

b. Planning and developing training programs.

c. Developing course content and related training material for use in resident training, directed study, and facility training programs.

d. Serving as technical assistant to the head of an organizational unit at the Academy which has responsibility for technical training.

e. Evaluating the conduct of resident, directed study, and facility technical training programs.

28. *TOURS OF DUTY.* A standard tour of duty at the Academy is two years.

29. *EMPLOYEE ELIGIBILITY.*

a. *General Rule.*

(1) An instructor who does not complete the initial tour is not eligible for return rights.

(2) An instructor who completes one but not two consecutive tours is eligible for return at the grade held immediately prior to the Academy assignment. If recruited from outside the agency, he is eligible for return at the grade assigned at the time of appointment.

(3) An instructor who completes two or more consecutive tours is eligible for return at the grade held at the time of exercising return rights or at the grade held immediately prior to the Academy assignment, whichever is higher.

b. *Exceptions.*

(1) Exceptions to the general rule permitting return at a higher grade than that to which he is otherwise entitled may be made by mutual agreement of the Aeronautical Center and the parent organization.

(2) If an employee was downgraded as a disciplinary measure while serving at the Academy, he is eligible to return at a grade no higher than that held at the time of exercising return rights. at the end of the third tour.

(3) An employee who is within reach for release from his competitive level and is scheduled for separation or demotion because of reduction in force or reorganization, shall be offered the alternative of returning immediately to his parent organization. He may return at a grade no higher than that to which he would be entitled upon completion of his current tour. He is not

entitled to early return because of reduction in rank. Only if his grade or tenure is affected.

(4) A temporary promotion does not entitle the employee to return at the higher grade to which temporarily promoted.

(5) A new employee hired from outside the agency is eligible only if endorsed by his parent organization. Normally reemployment rights should be approved by the parent organization unless it has available and can provide a highly qualified employee as an alternative which would make outside recruitment unnecessary.

(6) Unless approved as an exception by the Civil Service Commission, an instructor must meet all regulatory requirements involved in the exercise of return rights.

30. *EMPLOYMENT AGREEMENT.*

a. Persons appointed to instructor positions with return rights are required to sign an employment agreement (FAA Form 3330-5).

b. Employment agreements are executed to correspond with a standard two-year tour of duty.

c. An employee with return rights must execute a new employment agreement upon completion of his most recent tour. Otherwise his return rights are forfeited at the option of the Aeronautical Center or he is returned to his parent organization in accordance with the agency's authority to effect reassignments. (See FAA Form 3330-5.1)

d. An employee without return rights need not execute an employment agreement.

e. The Director of the Aeronautical Center, or his designee, is authorized to waive the remaining time covered by an employment agreement for reasons

which are considered to be in the best interests of the FAA.

31. *SCHEDULING EMPLOYEES FOR RETURN.* Eligible employees shall be scheduled for return to their parent organizations in accordance with the provisions of this paragraph. When flexibility permits, careful consideration should be given, not only to the needs of the Academy, but to the needs of the parent organization and the personal desires of the employee as well.

a. *After Completing One Tour.* Employees are normally expected to serve two tours. However, the Director of the Aeronautical Center, or his designee, may disapprove a second tour and return the employee to his parent organization if it is in the best interests of the agency to do so .

b. *After Completing Two Consecutive Tours.*

(1) When an employee has served two consecutive tours of duty, he may at the option of the Aeronautical Center be returned to his parent organization. This option may be exercised on an individual case-by-case basis or by a standard rotation policy.

(2) The employee and the Aeronautical Center may mutually agree to a third consecutive tour with the extension of return rights to the end of such tour.

(3) Return rights may be extended and preserved beyond the third consecutive tour by a common agreement which includes the Aeronautical Center, the employee, and the parent organization. There is no limit to the number of extensions which may be approved providing a new extension is negotiated upon the completion of each successive tour. The record must be documented by the execution of a new employment agreement.

(4) Upon completion of three consecutive tours, the grade level to which the employee will have rights of return is negotiable. Inasmuch as the parent organization has the option of approving fourth-tour extensions, it also has the right to approve such extensions under stipulated conditions. For example, a condition might be that the employee agrees to return at a grade no higher than that held upon completion of the third tour. If so, the employee must be made fully aware of his right to accept the conditions for extension or return immediately to the parent organization at his current grade level. All such agreements must be in writing and well documented for the future understanding of all parties concerned. These agreements may not be negotiated at a grade level below that held at the end of the third year.

(5) Each successive tour is negotiated and approved with the understanding that the employee may be returned to the parent organization at the option of the Aeronautical Center upon completion of the approved tour.

(6) At the end of any tour, an employee who is not covered by a mandatory rotation policy may forfeit return rights and remain at the Academy indefinitely, but only if his request for forfeiture is approved by the Director of the Aeronautical Center or his designee.

(7) An employee covered by a mandatory rotation policy may not forfeit return rights and remain indefinitely. Any tour of duty which would extend him beyond the maximum period of time allowed by the rotation policy must be approved by the Director of the Aeronautical Center or his designee.

32. *IDENTIFYING THE PARENT ORGANIZATION.*

a. *General Rule.* Except as provided in subparagraph b. below, the parent organization is normally identified as follows:

(1) The FAA employing jurisdiction from which the employee was selected for an Academy assignment, or

(2) The domestic region in which the employee's actual place of residence was located if the employe was recruited from outside the agency for initial assignment to the Academy.

(a) If an employee was recruited from the departmental service of another agency, the FAA Washington headquarters is the parent organization.

(b) When Washington headquarters is the parent organization, the Manager of Headquarters Operations shall coordinate with appropriate offices or services in determining whether a new employee shall be granted return rights under the provisions of 29.b. (5).

b. *Exceptions.*

(1) When in accordance with a determination order, activities or positions move geographically to other employing jurisdictions where no similar activity was located before, return rights transfer with the activity.

(2) When activities or positions have not moved, but the geographic area in which they were located has shifted from one employing jurisdiction to another, return rights transfer to the employing jurisdiction responsible for the geographic area.

(3) If an instructor at the Academy transfers overseas, his parent organization is the same as it was while employed at the Academy. If, however, he had no return rights while employed at the Academy, either through forfeiture or ineligibility, his parent organization is the Aeronautical Center.

(4) If an overseas employee transfers to an instructor position his parent organization is the same as it was while employed overseas. If he had no return rights while employed overseas, either through forfeiture or ineligibility, his parent organization is determined as in paragraph 32.a. (2) above, i.e., the domestic region in which his last actual place of residence was located in the continental United States prior to accepting the overseas assignment, regardless of when that may have been. If he never lived in the continental United States, that is, if he always resided in Alaska or Hawaii for example, his return rights shall be back to his former overseas organization.

33. *PLACEMENT PROCEDURES.*

a. An employee may exercise his return rights upon completion of any tour provided he has not previously forfeited those rights. For planning purposes, he may be queried several months in advance as to his intent. However, the formal application should be submitted not less than 90 days nor more than 120 days before the end of his current tour. The formal request must be accompanied by a current SF-171.

b. The parent organization must respond to an official request for restoration within 30 days after receipt. The parent organization shall make every effort to place the employee in a suitable permanent posi-

tion, thus eliminating the need for a second move. If an appropriate permanent assignment is not available, the following alternatives apply:

(1) The employee may remain at the Academy until an appropriate vacancy occurs PROVIDED such an arrangement is satisfactory to the employee, the Aeronautical Center and the parent organization. If any party disagrees, the employee shall be returned in accordance with the normal provisions of this order. If a delay is arranged, the first appropriate vacancy shall be offered.

(2) The employee may be placed at a grade lower than that to which he is entitled under the provisions of this order, if he voluntarily requests the preferred assignment in accordance with paragraph 400.a., PT P 3330.9 and provided he is fully informed of his rights to the higher grade.

(3) The parent organization should solicit placement assistance from other employing jurisdictions. Any offer of employment in an employing jurisdiction other than that to which return rights are attached must be acceptable to the employee.

(4) As a last resort, the parent organization may borrow an extra position from the Office of Budget for use while it is absorbing the returnee into its regularly authorized staffing.

c. After receipt of the offer, the employee has 30 days in which to decide. If he declines the offer, the following alternatives must be considered:

(1) If his reasons for declining are not acceptable to the Aeronautical Center or the parent organization, he may be returned in accordance with the agency's authority to effect personnel changes.

(2) If his reasons for declining are acceptable to the Aeronautical Center and the parent organization, he may be granted a one-tour extension or, with the concurrence of the Aeronautical Center, he may forfeit return rights and remain indefinitely.

34. - 40. *RESERVED.*